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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Drug and Other Harmful Substance Abuse Information and Referrals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of Section 3201 of the Anti-Drug Abuse Act of 1988, enacted November 18, 1988. The rule delineates WIC's role in screening participants and making referrals to drug and other harmful substance abuse counseling, treatment and education programs. The rule also integrates responsibilities for the provision of information about the dangers of abusing drugs and other harmful substances into the nutrition education provided through the WIC Program. The intended effect of this rule is to increase WIC participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment, as appropriate.

In addition, this rule amends regulations governing the WIC Program to comply with the mandates of the Child Nutrition and WIC Reauthorization Act of 1989, enacted November 10, 1989, which requires WIC State agencies to include in their State plan of program operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. This reauthorization also requires State agencies to ensure that each local agency maintains and makes available for distribution to WIC adult participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under Executive Order 12291, and has been classified to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual impact on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, it was determined that this rule does not have a significant economic impact on a substantial number of small entities. State and local agencies will be most affected because of the additional program administration and education involved, however, the effect on these small entities will be minimal. Participants and applicants will be affected because of the distribution of the list of local resources for drug and other harmful substance abuse counseling and treatment. Pregnant, postpartum, and breastfeeding women and parents or caretakers of infants and children will be affected because of the provision of information about the dangers of the use of drugs and other harmful substances and the potential for referrals to counseling and treatment.

Paperwork Reduction Act

The reporting requirements established in the proposed rulemaking of March 30, 1990, in §§ 246.4, 246.7, and 246.11 were reviewed by the Office of Management and Budget under Control Number 0584–0386 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) No changes in the reporting/recordkeeping burden have been incorporated into the final rule.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows:

(1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18;

(2) Applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9;

(3) Sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and

(4) Procurement by State or local agencies—administrative appeal to the

extent available under 7 CFR 246.24(b) and 3016.36.

Background

This final rule has three purposes: the codification of the self-implementing provisions of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690); the augmentation, pursuant to the intent of the Child Nutrition Act of 1966, as amended, of the categories of substances which should be included in the WIC Program's drug abuse information and referral activities by adding a definition of the term "other harmful substances"; and the codification of the requirements of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) pertaining to coordination of Program operations with alcohol and drug abuse counseling and treatment services and provision of abuse education.

Section 3201 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, amended section 17 of the Child Nutrition Act of 1966 (CNA) to require enhanced emphasis on the provision of drug abuse information and referrals to WIC participants. The WIC Program provides supplemental foods, nutrition education, and health and social service referrals to program participants. Since enactment of Public Law 95-627 in 1978, program regulations have required that health and social service referrals include the referral of participants, when appropriate, to alcohol and drug abuse counseling. Section 3201 of Public Law 100-690 further emphasizes WIC's role in this area by mandating that the program provide drug abuse education. The legislation specifically defines drug abuse education for the WIC Program to be the provision of information concerning the dangers of drug abuse and referrals for drug abuse counseling and treatment.

For the purpose of this regulation, the Department is using the two terms "drug" and "other harmful substances." Use of the term "other harmful substances" allows this final regulation to augment the term "drug" as defined in Public Law 100-690. The term "other harmful substances" includes substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus. The use of both of these terms permits the Department's definitions to encompass the definition of the term "alcohol and other drugs" which is used by the Center for Substance Abuse Prevention (CSAP), U.S. Department of Health and Human Services, when communicating drug abuse prevention messages. In order to promote coordination at the Federal level and adhere to the CSAP guidelines, the term "alcohol and other drugs" is used interchangeably with the two terms "drug" and "other harmful substances" in many of the drug abuse prevention education materials developed by USDA. See the more extensive explanation and definitions which follow in this preamble in section 2. Additions to definitions (§ 246.2).

The document entitled Healthy People 2000: National Health Promotion and Disease Prevention Objectives, prepared by the Public Health Service, U.S. Department of Health and Human Services, contains a national strategy for improving the health of the nation. The objectives are organized under four broad categories—health promotion, health protection, preventive services, and surveillance and data systems. With its statutory mandate to serve as an adjunct to good health care, the WIC Program can play an important role in helping to achieve some of these long-term health objectives. Several of the health objectives relate directly to increasing abstinence from tobacco, alcohol and other drug use by pregnant women. Although there is no statutory requirement that the Department coordinate WIC Program goals with DHHS' health objectives, the Department does have a mandate to coordinate WIC Program operations with other health and social services programs, including many administered by DHHS. Therefore, in an effort to further improve the health status of WIC participants, the Department takes these objectives into consideration whenever feasible. The Department believes that the WIC Program can help attain the following Healthy People 2000 goals: promote smoking cessation during pregnancy; increase the proportion of service providers who screen for alcohol and other drug use problems and provide counseling and referral as needed; reduce the rate of fetal alcohol syndrome; and, increase abstinence from use of tobacco, alcohol, cocaine, and marijuana by pregnant women.

Low birth weight and prematurity, both of which are associated with an increased risk of infant mortality, are the most serious known consequences of maternal drug use. By providing drug abuse prevention information and referrals, the WIC Program can also contribute to the attainment of two additional Healthy People 2000 health objectives: Reduce the infant mortality rate; and reduce low birth weight and very low birth weight.

By improving the health of infants and children through the provision of nutritious, supplemental foods, health care referrals, nutrition education and information about the dangers to the fetus of drug and other harmful substance use, the WIC Program can assist in the attainment of the health component of the first of the President's six National Goals for Education: "By the year 2000, all children in America will start school ready to learn." One of the objectives of this goal is, "children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and the number of low birth weight babies will be significantly reduced through enhanced pre-natal systems."

A child must be physically and emotionally healthy in order to learn. Ensuring that a child arrives at school healthy and well nourished and ready to learn begins with the health of their parents and the care the child received prenatally. Early, high-quality prenatal care, including attention to maternal nutrition, illness, smoking and alcohol or other drug use, is critical to improving pregnancy outcomes, especially low birth weight. For example, women who are substance abusers are less likely to get prenatal care. In addition, parents or caretakers of infants and children who use drugs or other harmful substances may not be able to provide their infants and young children with the nurturing necessary to enable them to be physically and emotionally healthy in order to learn and be successful in school.

The Department of Health and Human Services' Healthy Start initiative has the goal of reducing infant mortality by 50 percent in 5 years in 15 U.S. communities with extremely high infant mortality rates. Through grants administered by the Health Resources and Services Administration, medical and social services providers in these 15 Healthy Start Communities will work collaboratively to develop new and innovative means to deliver services that meet the needs of pregnant women and infants. Each community that received a grant is tailoring its program to its special needs and population groups by developing creative plans to deal with teenage pregnancy, inadequate prenatal care, poor nutrition, smoking, alcohol and other drug abuse. Clearly, the WIC Program, by providing referrals to health care providers and drug and other harmful substance abuse counseling, treatment and education programs, will be an important resource in assisting the selected communities in this effort.

The legislative emphasis on the problem of drug use during pregnancy results from continuing concerns about the infant mortality rate in the United

States and the number of infants born with health problems associated with the drug use of their mothers. The WIC Program was included under Public Law 100–690 because of its experience in providing direct services to low-income, high-risk pregnant, postpartum and breastfeeding women as well as the program's ability to link this high-risk population with needed social services through referrals and service coordination. Congress realistically limited WIC Program involvement to the provision of drug abuse information and referrals. This limitation is based on the recognition that the complex nature of drug use and the physiology of addiction demand specialized professional assistance. The WIC Program can encourage and assist women and teenage girls who have or are at risk for drug and other harmful substance use problems to seek necessary comprehensive prevention, education, counseling and treatment services offered by community drug treatment specialists. By warning women about the dangers of abusing drugs and other harmful substances and making appropriate referrals, WIC contributes to the broader goal of decreasing the incidence of drug abuse among pregnant women, perinatal addiction, and infant mortality and morbidity.

The legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional drug abuse prevention, education, counseling and treatment resources and commitments of the health community at large. Further, the rule recognizes that WIC's effectiveness in providing drug and other harmful substance abuse information and referrals will be limited if drug-abusing individuals avoid or discontinue participation in the WIC Program. Therefore, this rule incorporates the legislative mandates in a manner that depends appropriately on external expertise and will not act as a barrier to program participation.

Some WIC Program activity in the area of drug and other harmful substance abuse prevention already exists. In addition to current regulations that require referrals to be made to alcohol and drug abuse counseling as part of the WIC Program's role as an adjunct to health care, it is routine for many WIC local agencies to warn pregnant and breastfeeding women about the dangers of using alcohol, tobacco and other drugs and harmful substances. Most WIC State agencies consider alcohol, tobacco and drug abuse as nutritionally-related risk criteria for certification purposes. Also, many WIC State and local agencies are involved in special initiatives that address the problem of drug and other harmful substance use during pregnancy and while breastfeeding.

The amendments to Program regulations made necessary by Public Law 100–690 reflect Congressional intent that there be very little change from current operations. A review of the legislative history indicates the recognition that most of the WIC responsibilities mandated by Public Law 100–690 are already common practice. In debating the Anti-Drug Abuse Act of 1988, Senator Leahy stated that the drug abuse education responsibilities required by Public Law 100–690, especially the referrals, are "likely already being done in most instances" (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)]. The Senator further stated that Congress does not intend the drug abuse education efforts to "reduce or impair each State agency's operation of WIC nutrition education efforts, WIC nutrition risk assessments and the other vital aspects of the WIC Program." Rather, Congress emphasizes WIC's responsibility to refer participants with possible drug or alcohol problems to appropriate counseling or treatment where it is locally available.

The provisions of Public Law 100–690 make it necessary to include explicit reference in program regulations to WIC's responsibility to provide drug and other harmful substance abuse information and to reemphasize WIC's role in making referrals to drug and other harmful substance abuse counseling, treatment and education programs. Program operation will be primarily affected in agencies in which such efforts are not already underway.

It is important to note that State efforts will be facilitated by legislatively mandated Federal responsibilities for identifying effective methods for providing drug abuse information and referrals and developing and distributing materials. The Department, as required by Public Law 100–690, conducted a study of appropriate methods of drug abuse education in the WIC program. The study report, entitled "A Study of Appropriate Methods of Drug Abuse Education for Use in the WIC Program," was published in January 1990, and distributed to all WIC State and local agencies. The report presents practical information about drug abuse prevention which can be applied to decisions about drug abuse education in WIC. The report also emphasizes that drug abuse assessment, counseling and treatment services must be provided by drug abuse prevention professionals. It stresses that WIC's appropriate complementary role is to provide information about the dangers of drug abuse and to make referrals to appropriate drug abuse services.

The following materials have been or are currently being developed by the Department to assist WIC local agency professionals with their drug abuse prevention information and referral activities and to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and while breastfeeding:

- A brochure in English entitled "Pregnant? Drugs and Alcohol Can Hurt Your Unborn Baby" and a companion poster in English and Spanish were developed to warn WIC participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. These materials were distributed to WIC State agencies in January 1991. The brochure should be available in Spanish in early Fiscal Year 1993.
- A videotape entitled "Lifelines: To Healthy Babies" has been developed to warn participants about the dangers of alcohol and other drug use during pregnancy and breastfeeding. A companion leader's guide for WIC professionals to use with participants in discussing the dangers of alcohol and other drug use during pregnancy is currently under development. The videotape and companion guide will be available for distribution in early Fiscal Year 1993.
- A resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" has been developed to assist WIC local agency staff. It contains information about the following: The various types of drugs; the dangers of drug use during pregnancy and breastfeeding; methods for screening for drug use and presenting anti-drug use messages; how to identify local drug abuse resources and establish referral networks; and selected professional and participant materials. The manual will be available for distribution in early Fiscal Year 1993.
- A videotape entitled "The WIC Connection: Substance Use Information and Referral" has been developed to assist WIC local agency staff in meeting the drug abuse information and referral requirements. A companion piece which will outline effective interviewing, screening and referral techniques is currently under development. These materials will be available for distribution in early Fiscal Year 1993.

Section 123(a)(4) of Public Law 101–147, which amended section 27(f)(1)(C)(iii)of the CNA, requires WIC State agencies to include in their State plan of operation and administration a plan to coordinate operations under the program with alcohol and drug abuse treatment services. State agency plans to coordinate operations with alcohol and drug abuse counseling services were already required. Section 123(a)(3)(D) of Public Law 101–147, which amended section 17(e)(4) of the CNA, requires State agencies to ensure that each local agency maintains and makes available for distribution a list of local resources for substance abuse counseling and treatment.

The proposed rule, published on March 30, 1990 (55 FR 11946), provided for a 60-day comment period, which ended on May 29, 1990. During that period, 15 comments were received from a variety of sources, including State and local health professionals, other State agency staff and a non-profit public interest group. The Department would like to thank all of the commenters who responded to the proposed rule. Their comments were helpful in formulating this final rule.

All provisions of the proposed rule are being finalized as proposed except for the paragraph (n) in § 246.7 and new paragraph (a)(3) in § 246.11. The proposed language in § 246.7(n) was revised to clarify that if a State agency determines that screening is necessary to fulfill referral requirements for drug and other harmful substance abuse, the State agency must require local agencies to undertake screening as part of their referral process. The proposed paragraph in § 246.11(a)(3) would have required distribution of anti-drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program. In response to comments that such a wide distribution of materials would be a waste of resources, the proposed paragraph is revised in this final rule to require the provision of anti-drug and other harmful substance abuse information, which does not necessarily have to be in the form of written materials, to all categories of adult participants and to parents or caretakers of child participants. Anti-drug and other harmful substance abuse information may also be provided to WIC Program applicants and pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC Program, as deemed appropriate by State and local WIC agencies.

The remainder of this preamble discusses each provision, the major concerns expressed by commenters regarding each provision, and the rationale behind the decisions embodied in this final rule.

1. Drug and Other Harmful Substance Abuse Prevention Specified in General Purpose and Scope (Section 246.1)

Public Law 100–690 amended section 17(a) of the CNA by adding a specific reference to drug abuse as one of the health problems to be addressed by the WIC Program. The legislation amends the last sentence in section 17(a) to read: "The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons" (Pub. L. 100–690, sec. 3201). To parallel this amendment to the CNA and the associated concern for other harmful substances, the proposed rule added specific reference to drug and other harmful substance abuse to § 246.1.

The Department received five comments concerning the reference to drug and other harmful substance abuse prevention in the general purpose and scope of the WIC Program. Three commenters were supportive. Two commenters questioned whether this requirement is within the mission of the WIC Program, including one who suggested that it is not appropriate to identify a specific health problem in this section without addressing other critical health problems. This change, however, reflects Congress' decision to make drug abuse an area of focus for the WIC Program. Although the explicit reference to the prevention of the occurrence of health problems, including drug and other harmful substance abuse, in the Program's legislative purpose statement is new, as indicated previously, State agency activity and interest in the potential problems of drug and other harmful substance abuse among WIC's target population is not.

Because drug and other harmful substance use is associated with low birthweight, prematurity and other major causes of infant death and disability, the Department believes it is appropriate and within the mission of the WIC Program to address this problem. Further, it was Congress' clear intent in enacting Public Law 101–147 and the WIC-related provisions of Public Law 100–690 that WIC play a role in drug and other harmful substance abuse referrals. In addition, coordination of WIC Program services with programs serving the same population, within the legislated parameters of the WIC Program, may help further the goals set forth by the President as described earlier in this preamble. Therefore with the exception of one change discussed in §§ 246.7 and 246.11 this rule will be adopted as proposed.

2. Additions to Definitions (Section 246.2)

Section 3201 of Public Law 100–690 added the definition of "drug abuse education" to section 17(b) of the CNA. Section 3201 of the legislation stipulates that, for WIC. " 'Drug abuse education' means—(A) the provision of information concerning the dangers of drug abuse; (B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals; and (C) the provision of materials developed by the Secretary * * *." This definition outlines the role Congress envisioned as feasible for the WIC Program, to inform but not necessarily educate WIC participants about the dangers of drug abuse and to make appropriate referrals. In order to make clear the role envisioned for WIC by Congress, the term "drug abuse education" is not used in program regulations. Rather, the regulatory amendments reference the relevant components of drug abuse education for WIC as defined by the legislation: drug abuse information and referrals.

In connection with this, definitions for the terms "drug" and "other harmful substances" were proposed to be added to program regulations. The term "drug" is defined in section 3601 of Public Law 100–690 as "(A) a beverage containing alcohol, (B) a controlled substance, or (C) a controlled substance analogue." However, the scientific literature also attributes serious health problems of pregnant women and their fetuses to the use of substance not addressed by this definition. Since the CNA of 1966, as amended, states that the purpose of the WIC Program is to prevent the occurrence of health problems, including drug abuse, the restricted definition of drugs stipulated in Public Law 100–690 does not address the full range of substances that could be harmful to maternal and fetal health. Therefore, the Department also proposed to add a definition of the term "other harmful substances," which includes "such substances as tobacco, prescription drugs and over-the-counter medications, that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus."

Three commenters addressed the proposed additions to the definitions. One commenter agreed with the definitions. One commenter suggested that the definition "other harmful substances" is too broad and one commenter suggested that the Department should change the definition of "other harmful substances" to include: "(a) drugs, as defined above; and (b) substances such as tobacco, prescription drugs * * *".

The Department agrees that defining both "drugs" and "other harmful substances" is cumbersome. However, to be legally sufficient, it is necessary to use the definition of "drug" as defined in Public Law 100–690. Furthermore, it is also important to augment this definition and to include a definition of other substances that are not addressed in Public Law 100–690, but which are nonetheless harmful to the WIC population. Therefore, the definitions of "drugs" and "other harmful substances" are adopted as proposed in this final rule.

As stated previously, CSAP, U.S. Department of Health and Human Services, encourages use of the term "alcohol and other drugs" when communicating drug abuse prevention messages. In addition to illegal drugs, this term includes tobacco, prescription drugs and over-the-counter medications. The fact that alcohol is a drug is emphasized. Therefore, in order to promote coordination at the Federal level and to be consistent with the CSAP guidelines, the Department has used the term "alcohol and other drugs" in various materials it has developed for both WIC participants and professionals. This term encompasses both the WIC regulatory definitions for "drug" and "other harmful substances" in § 246.2 and is used interchangeably with these two terms defined in this rulemaking.

3. State Plan (Section 246.4)

One addition was proposed to be made to § 246.4(a)(8), which outlines responsibilities for referrals to health and social services, to comply with the referral requirements stipulated in Public Law 100–690.

WIC's responsibility to refer participants to alcohol and drug abuse treatment and education programs was proposed to be added to § 246.4(a)(8). The proposed rule amended § 246.4(a)(8) to reference "drug and other harmful substance abuse counseling, treatment and education programs" to be consistent with the newly defined terms in the proposal and the Congressional intent that the role of the WIC Program is to refer possible drug-abusing participants not only to necessary professional alcohol and drug abuse counseling, but also to treatment and education services, when such services are available (134 Cong. Rec. 17,316 (daily ed. Oct. 21, 1988, statement of Sen. Leahy)).

Six comments were received on this proposal. The majority of commenters supported the provision as proposed. One commenter suggested that WIC's role should be to coordinate and refer participants to counseling, treatment and education programs only, and this role is adequately described in § 246.4(a)(8). The Department believes, however, that these actions alone would not fulfill the legislative mandate, which specifically defines drug abuse education as including the provision of information concerning the dangers of drug abuse. Therefore, § 246.4(a)(8) is adopted in this final rule as originally proposed.

One commenter requested clarification about the categories of participants which should be referred to such services. Since section 3201 of Public Law 100–690 specifically includes referrals of pregnant, postpartum and breastfeeding participants in its definition of "drug abuse education," clearly it is the intent of the Congress that referrals should be provided to all categories of adult participants. However, local agencies may also provide referrals to parents or caretakers of infant and child participants, when appropriate. Pursuant to Public Law 100–690, referrals may also be provided to pregnant, postpartum and breastfeeding women and to caretakers of infants and children participating in local agency services other than the program, as deemed appropriate by local agencies. Providing referrals to all categories of participants and to caretakers reflects concern about the effects of drug and other harmful substance abuse on maternal health, the health of the fetus and newborn, and the impact on the nurturing and care of young children when their mothers or caretakers are using drugs and other harmful substances.

Concern was expressed by one commenter that referral of participants to drug abuse counseling can be time consuming. To allow flexibility for the development of appropriate referral protocols at the State level based on local program and legal requirements, the Department is not including specific requirements for referral protocols in these regulatory amendments. A referral can be accomplished simply by providing all adult participants and caretakers of participating infants and children with the list of local substance abuse counseling and treatment resources which Public Law 101–147 and this regulation require WIC local agencies to maintain and make available for distribution. Receiving such a resource list may prompt some participants and caretakers to voluntarily seek out counseling or group support services. Some State agencies may, however, opt to develop a more formal referral system wherein a staff member initiates contact with a substance abuse counseling or treatment agency on behalf of an interested participant. Information about developing appropriate referral protocols is included in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals.

Section 246.4(a)(9) of the proposed rule would require that a description of the methods that will be used to provide drug and other harmful substance abuse information be included in the State plan of operation and administration's description of nutrition education goals and action plans. This revision provides a mechanism for State planning and allows Departmental review of State compliance with the mandate.

Of the four comments received on this Section of the proposal, two commenters were opposed, stating that including a description of methods that will be used to provide drug and other harmful substance abuse information in the description of nutrition education goals and action plans implies that this is a part of nutrition education. One commenter noted that past experience identifying and referring alcohol abusers has not been entirely successful, and urged the provision of effective staff training.

The rationale for including a description of the methods that will be used to provide drug and other harmful substance abuse information in the State plan description of nutrition education goals and action plans is that abuse of drugs and other harmful substances is incompatible with good nutrition. Tobacco, alcohol and other drugs tend to suppress appetite and can, therefore, interfere with healthy eating habits and normal weight gain during pregnancy. Cigarette smoking may affect maternal nutrition (and consequently, fetal nutrition) in the following ways: the increased metabolic rate in smokers can lead to the lower availability of calories; and exposure to tobacco may increase iron requirements and decrease the availability of certain nutrients such as vitamin B12, amino acids, vitamin C,

folate, and zinc. Alcohol consumption may be related to decreased dietary intake, impaired metabolism and absorption of nutrients, and altered nutrient activation and utilization. Interactions between alcohol and deficiencies of such nutrients as protein and zinc may also play a role in the etiology of alcohol-related effects in the fetus. Therefore, the Department continues to believe that inclusion of drug and other harmful substance use information in the provision of nutrition education is appropriate, and § 246.4(a)(9) is adopted by this final rule as originally proposed.

Additionally, § 246.4(a)(11)(ii) was proposed to be revised to require that methods for providing drug and other harmful substance abuse information to participants be described in the local agency procedure manual. This change is necessary to reinforce the responsibility of State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education.

Also, to implement the goals of coordinating WIC services with those of other counseling and treatment services, as set forth in section 123(a)(3)(D) of Public Law 101–147, which amended Section 17(e) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(e), a new paragraph 246.4(a)(11)(v) was proposed to be added to require that the local agency procedure manual include instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

One commenter addressed both of the proposed local agency procedure manual requirements. The commenter was opposed to the requirements and objected to incorporating drug and other harmful substance abuse information in nutrition education. As described previously, however, the rationale for including drug and other harmful and substance abuse information with nutrition education is that abuse of drugs and other harmful substances is incompatible with good nutrition because it can affect dietary intake, nutritional status, and metabolism.

Another commenter addressed only the proposed requirement that methods for providing drug and other harmful substance abuse information be described in the local agency procedure manual. The commenter was opposed and stated that the requirement is unnecessary because the appropriateness of particular methods and services varies among communities. The Department acknowledges that the extent and pervasiveness of drug and other harmful substance abuse problems, and, therefore, the appropriateness of particular methods and services, do vary greatly from community to community. The Department believes, however, that the local agency procedure manual requirement is the most effective way to reinforce the responsibility of the State agencies for providing local agencies with the guidance or materials to facilitate incorporation of drug and other harmful substance abuse information in nutrition education. Therefore, the referral requirement and the inclusion in the State plan of the procedure to be used in making such referrals, are adopted in this final rule as proposed.

4. Provision of List of Local Resources for Substance Abuse Counseling and Treatment; and Screening for Drug and Other Harmful Substance Abuse (Section 246.7)

Section 123(a)(3)(D) of Public Law 101–147 revised section 17(e) of the CNA to require the State agency to ensure that each local agency maintains and makes available for distribution to WIC participants and applicants, as appropriate, a list of local resources for substance abuse counseling and treatment. Section 246.7(a) was proposed to be revised to incorporate this requirement. It should be pointed out, however, that it was neither the intent of Congress nor of the Department that there be documentation in case files that applicants or WIC participants were provided with this list.

The Department received eight comments addressing the requirement to maintain and make available a list of local resources for substance abuse counseling and treatment. All of these commenters supported the general concept, but expressed concern about the unavailability of services and barriers to treatment, especially for low-income pregnant women. As previously stated in the background section, the legislation and this rule recognize that WIC's overall effectiveness in this effort is dependent upon the availability of professional substance abuse resources and commitments of the health community at large. The Department also recognizes that reaching women who are dependent on drugs or other harmful substances with health information and encouraging them to follow through on referrals can be difficult, and not always successful. Simply handing out a list of referral resources is unlikely to help these women. However, the Department believes that receiving such a resource list may prompt some participants and applicants to voluntarily seek out counseling or group support services. These individuals might include nondependent drug and other harmful substance users and cigarette smokers who are sufficiently motivated to assume responsibility for their own health.

The Department is aware that resources in many communities are limited and that often programs are filled to capacity. Some WIC agencies may find that participants referred for assessment and then diagnosed as dependent on drugs or other harmful substances cannot be accommodated. Even those areas with limited or no substance abuse treatment resources, however, are likely to have hotlines or self-help groups which may be able to provide assistance. The list of local resources maintained by WIC local agencies should include a listing of hotlines and self-help groups for alcohol and other drug users (e.g., Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, Al-Anon Family Groups, Adult Children of Alcoholics, Women for Sobriety) as well as local smoking cessation programs sponsored by organizations such as the American Lung Association and American Cancer Society. Staff should be realistic with participants about the availability of resources. Therefore, in light of the support generally expressed by commenters, § 246.7(a) is adopted unchanged by this final rule.

As noted in the preamble to the proposed rule, Public Law 100–690 does not include specific requirements for assessing drug abuse by WIC participants. Further, the Department believes drug use assessments could create barriers to program participation by discouraging drug-using women from applying for or participating in the program. Most States already include some basic screening for alcohol, tobacco and other drug use as part of WIC's medical or nutritional assessment since abuse by pregnant women is identified as a nutritional risk criterion in current WIC regulations at § 246.7(d)(2)(iv). Individual States may deem additional screening necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities.

In the WIC Program, screening for drug and other harmful substance use is not intended to diagnose, but to detect warning signs of drug and other harmful substance use and to uncover potential problems. The results of such screening are not intended to be definitive and, if appropriate, should be followed by a referral for assessment. The assessment

process is an in-depth evaluation of the extent of an individual's problems with drugs and other harmful substances and should be conducted by a professional trained in drug and other harmful substance abuse assessment, counseling and treatment.

In the proposed rule a paragraph was added to § 246.7(n) which would permit State agencies to require screening for the use of drugs and other harmful substances. This paragraph stipulated that, where such screening is required, it must be limited to the minimum extent necessary to facilitate drug and other harmful substance abuse information and referral responsibilities. Any screening WIC State agencies determine to be necessary to fulfill the requirements of this regulation would be integrated into the medical or nutritional assessment performed during a participant's certification process. In the proposed rule, it was the intention of the Department that such screening should be reasonably related to the mandated referral requirement. Screening was not required to meet the minimum referral obligations, but if screening was performed, it was proposed that it must be reasonably related to the mandated referral requirement in order to be considered an allowable WIC cost.

Six comments addressing screening were received. Four commenters opposed regulations that would permit screening, stating that it:

(1) Would be a drain on nutrition assessment and education resources;

(2) Would require a level of skill not obtainable through in-service training alone; and

(3) Could discourage drug-abusing women from participating in WIC.

One commenter suggested that a public health nurse has the medical training or is more adept in evaluating and screening for the effects of drugs and other harmful substances than a WIC nutritionist, and recommended that referral be made in conjunction with the public health nurse at the time of prenatal visits at the clinic, not during WIC certification. The commenter also questioned the validity of screening and referring for drugs and other harmful substances, since most nutritional risk criteria are based on self-declaration by the client or on diagnosis by the physician in conjunction with current treatment in a drug or other harmful substance abuse treatment program.

One commenter stated that screening for tobacco, alcohol and other drugs has been incorporated into the certification process for some time, and one commenter suggested that screening would be more effective if there were mandatory drug testing.

Comments which opposed the proposed provision permitting screening were given serious consideration by the Department. Since referrals are required by Public Law 100–690 as a part of drug abuse education, however, some very basic screening may be necessary to effectively fulfill WIC's drug and other harmful substance abuse information and referral responsibilities. The Department continues to believe that screening WIC participants for drug and other harmful substance use is well within the Congressional mandate that WIC refer participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals. As previously discussed, this final regulation allows State agencies flexibility in deciding the extent and type of screening activities, if any, which will be appropriate for that State's particular WIC population. If a State agency determines screening is necessary, asking a limited number of questions during certification in order to screen for drug and other harmful substance use would be an adequate and reasonable method for determining which WIC participants need referral for assessment. Many State agencies already include some basic screening as part of the medical or nutritional assessment.

In response to the concern expressed that screening would be a drain on nutrition assessment and education resources, the sponsoring legislators made it clear that the drug abuse information and referral efforts are not meant to reduce or interfere with WIC's primary and ongoing responsibilities. Although some basic screening may be necessary to assist in fulfilling the referral mandate, WIC staff are not expected to diagnose drug and other harmful substance abuse problems or to provide in-depth counseling. Through established linkages and coordination with local resources, suspected drug and other harmful substance users are to be referred to existing assessment agencies for professional evaluation, as appropriate. Special in-service staff training should be sufficient to provide the skills necessary for conducting minimal basic screening activities.

In response to the commenter suggesting mandatory drug testing, the Department believes that such testing would serve as a barrier to program participation. In addition, the costs related to mandatory testing could lead to a diversion of resources which would run counter to Congressional intent that WIC's drug abuse information and referral activities not detract from other vital program services. And finally, such a requirement would impose a condition on eligibility not authorized by current legislation.

Concern was expressed by several commenters that the proposed regulation made no mention of the need for participant consent when screening for the use of drugs and other harmful substances to the extent needed to fulfill the referral mandate. Pub. L. 100–690 does not address the issue of confidentiality pertaining to WIC's drug and other harmful substance abuse referral activities. However, in response to this concern, the Department would like to clarify that current WIC regulations at 7 CFR 246.26(d) and instructions pertaining to confidentiality of information (FNS Instruction 800–1 "WIC Program—General Administration: Confidentiality") apply in the unusual situations of providing information on drug and other harmful substance use in general nutrition education sessions, handing out brochures, providing a list of local resources for counseling and treatment or performing minimal basic screening for purposes of informal or formal referral for further assessment.

If an agency carries out activities beyond the minimum mandates of Public Law 100–690 and has drug and alcohol abuse specialists, whose primary function is to conduct screening and referral activities, or has a separate unit whose primary function is drug and alcohol abuse diagnosis, treatment, or referral for treatment, the information obtained on WIC participants may also be subject to the Department of Health and Human Services' (DHHS) "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations (42 CFR part 2). WIC agencies performing activities which cause DHHS confidentiality regulations to apply must adhere to these regulations or potentially face criminal penalty. DHHS confidentiality regulations specifically mandate, for example, the content of written release forms, the notice of DHHS's Federal confidentiality requirements, and security of the records which contain alcohol and other drug abuse information. It is not anticipated, however, that DHHS regulations will apply to the basic minimal screening activities that will characterize the majority of WIC local agency efforts in support of the legislative mandate to provide drug abuse information and referrals. It is not the intent of the Department to require State agencies to go beyond the mandates of Public Law 100–690 and hire drug and alcohol

abuse specialists or otherwise conduct drug and other harmful substance abuse information and referral activities in such a way as to be subject to DHHS' confidentiality regulations.

In addition to Federal regulations, once WIC agencies screen participants for drug and other harmful substance use, they may, depending on the answers given, possess information deemed confidential by the State or by the code of ethics governing the professional conduct of the screener.

Participant consent issues are discussed in detail in the resource manual entitled "Providing Drug Abuse Information and Referrals in the WIC Program: A Local Agency Resource Manual" that the Department has developed for WIC professionals. It must be emphasized that before State and local WIC agencies develop screening procedures, all relevant legal issues need to be resolved. Current State laws and reporting requirements about prenatal drug use must be considered. Applicable statutes for the protection of client confidentiality and specific State regulations governing consent by emancipated minors must also be considered. Laws governing these issues vary from State to State. WIC State agencies should consult with State legal counsel prior to developing screening procedures.

Finally, a commenter suggested that since the intent of the drug and other harmful substance abuse information and referral policy seems to be for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, it may be more cost-effective for those facilities working with drug and other harmful substance abuse rehabilitation to have copies of WIC outreach brochures for referral to WIC. It should be emphasized that the primary intent of providing drug and other harmful substance abuse information and referrals is not for the WIC Program to initiate outreach for drug and other harmful substance abuse programs, per se. The intent of WIC's drug and other harmful substance abuse information and referral responsibilities is to increase participants' access to information about the dangers of the use of drugs and other harmful substances during pregnancy and while breastfeeding and to facilitate referrals of participants for counseling and treatment and thereby contribute to the broader goal of decreasing perinatal addiction, infant mortality and morbidity, and the incidence of drug and other harmful substance abuse among pregnant women.

For the reasons discussed above, the Department has decided to finalize § 246.7 (a) and (n) essentially as proposed. The only change has been to reorganize § 246.7(n) to make clear that a State agency shall mandate screening when the State agency determines that screening is necessary to fulfill the referral and other harmful substance abuse information requirements.

5. Provision of Information to Participants About the Dangers of Drug and Other Harmful Substance Use (Section 246.11)

Section 3201(3) of Public law 100–690 added drug abuse education to services required to be provided by the WIC Program. Section 17(e)(1) of the CNA, as amended, states in part that the State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program; and that the State agency may also provide nutrition education and drug abuse education to pregnant, postpartum and breastfeeding women who do not participate in the program.

In response, the Department proposed to add a paragraph to § 246.11(a) of the regulations which would outline requirements regarding the provision of drug and other harmful substance abuse information to WIC Program participants and parents or caretakers of infant and child participants. Section 246.11(a)(3) was proposed to clarify the extent and scope of WIC's involvement in drug and other harmful substance abuse information efforts.

This proposed paragraph would require that information about the dangers of using drugs and other harmful substances be integrated into the nutrition education provided by the WIC Program. Consistent with Congressional intent, the goal of WIC's information provision effort about the use of drugs and other harmful substances would be the heightened awareness among WIC participants about the dangers of such use, especially during pregnancy and while breastfeeding.

State agencies would have the discretion to determine who at the local agency level can most reasonably provide drug and other harmful substance abuse information. The delivery of such information would not necessarily have to be the responsibility of WIC nutritionists.

It would continue to be the responsibility of the State and local agencies to determine the appropriate amount of emphasis to be placed on drug and other harmful substance abuse information within nutrition education, based on the magnitude of the drug and other harmful substance abuse problem among the State or local WIC population. Proposed § 246.11(a)(3) was not intended to diminish the traditional goals of the nutrition services component of the WIC Program; rather, it was designed to permit attention to the problem of abusing drugs and other harmful substances in the larger context of the WIC Program. The proposal did not specify a minimum amount of time to be spent on providing drug and other harmful substance abuse information.

The Department received twelve comments concerning the integration of drug and other harmful substance abuse information into the nutrition education provided through the WIC Program. Five commenters were supportive of the requirement and provided suggestions for the materials to be distributed, stating that they should be appropriate for a semi-literate and multicultural population. Five commenters also discussed the inclusion of drug and other harmful substance abuse prevention information as part of the one-sixth nutrition education requirement.

Seven commenters opposed the requirement to integrate drug and other harmful substance abuse information into the nutrition education provided through WIC, stating that this would undermine the current level of nutrition education. Another concern was that it would imply that dissemination of written information through distribution of materials is nutrition education. Concern was also expressed that it is not an effective way to get drug-abusing women into treatment programs, and distributing materials that are not targeted to those who need them will be a waste of program resources. One of these commenters suggested incorporating information about the dangers of abusing drugs and other harmful substances into Subpart D, Participant Benefits, as a new and separate section.

Another commenter stated that making the provision of information on drugs and other harmful substance abuse an integral part of nutrition education infers that the provision of this information is the responsibility of the nutritionist, despite a later statement which gives States discretion in determining who at the local level will provide this information. The commenter indicated that this inference is contradictory to the intent of retaining WIC's traditional role as a provider of nutrition services. If the State elects to have a health professional other than the nutritionist (or the individual providing nutrition information) provide drug and other harmful substance information, such integration

could result in nutrition counseling which contains no nutrition information or nutrition counseling provided by individuals with no expertise on the subject matter.

As discussed earlier in relation to the revised State Plan requirements, the Department has carefully considered suggestions by those commenters who oppose the requirement to integrate drug and other harmful substance abuse information in the nutrition education provided through WIC. The strategy of integrating information about the danger of abusing drugs and other harmful substances in nutrition education is, however, intended to reflect current knowledge about the effectiveness of delivering anti-drug and other harmful substance abuse messages in the context of advice about positive lifestyle choices such as healthy eating. The Department believes that this approach most closely resembles current WIC local agency practices for warning pregnant women about the danger of abusing drugs and other harmful substances. The purpose of this requirement is to ensure that WIC provides drug and other harmful substance abuse information to program participants while retaining its traditional role as a provider of nutrition services. In addition, as previously noted, abuse of drugs and other harmful substances is incompatible with good nutrition.

In response to the concern that providing drug abuse information is not an effective way to get drug abusing women into treatment, the Department believes that for many participants, a clear presentation of basic information about the potential reproductive hazards of using drugs and other harmful substances may be enough to change attitudes and behaviors. Further, many pregnant women are already abstinent and only need reinforcement of this chosen lifestyle. Many participants do not use drugs and other harmful substances and will welcome information that can help them assure healthier pregnancies.

For other clients, a goal of total abstinence during pregnancy is not achievable because they used drugs or other harmful substances before confirming their pregnancy or before receiving and understanding prevention information. Some of these women, however, may be persuaded to stop using drugs or other harmful substances. They need to know that stopping use at any time, even late in pregnancy, can decrease risk of harm to the developing fetus and improve parenting practices. The Department acknowledges that reaching women who are dependent on drugs or other harmful substances with health information and encouraging them to follow through on referrals can be difficult, and frequently unsuccessful.

In response to the commenters' concern that distribution of drug and other harmful substance abuse materials to all pregnant, postpartum and breastfeeding women and to parents or caretakers of infants and children applying for and participating in WIC would be a waste of resources, in § 246.11(a)(3) of this final rule the Department is deleting the requirement that drug and other harmful substance abuse information be provided to WIC applicants. As required by section 17(e)(1) of the CNA, final § 246.11(a)(3) further makes clear that drug and other harmful substance abuse information may be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the WIC Program, as the local agency deems appropriate.

In addition, § 246.11(a)(3) of this final rule specifies the provision of drug and other harmful substance abuse information, rather than the actual distribution of drug and other harmful substance abuse materials. Thus, under the final rule it is not a requirement that written drug and other harmful substance abuse materials be distributed to all the listed categories of participants and caretakers; however, for the reasons cited in section 3 of this preamble, information about the dangers of drug and other harmful substance use must be communicated to all these groups in some manner. As one example, a participant could receive information by viewing the video "Lifelines: To Healthy Babies" and would not necessarily have to receive a brochure containing information.

The inclusion of drug and other harmful substance abuse information as a component of nutrition education also means that, as stipulated in § 246.14(c)(1) of the current regulations, costs incurred for providing drug and other harmful substance abuse information may be counted toward the requirement that an amount equal to one-sixth of the State agency's administrative grant or expenditures be spent on nutrition education. However, the proposed rule would have amended § 246.14(c)(1) to make clear that costs incurred for screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services would not contribute toward fulfillment of the one-sixth requirement. This rule would not preclude States from funding drug and other harmful substance abuse initiatives with their WIC administration and program services grants, except as provided in the new § 246.14(c)(9), which is discussed in section 6 of this preamble, and in new § 246.7(n), as discussed in section 4 of this preamble.

With respect to commenter concern that materials should be appropriate for multi-cultural populations, the Department notes that the provision of drug and other harmful substance abuse education materials in languages other than English as required by the amendment to section 17(f)(14) of the CNA is already reflected in WIC regulations, given the longstanding requirement for bilingual nutrition education materials in § 246.11(c)(3).

The Department received five comments discussing the consequence of including drug and other harmful substance abuse prevention information in nutrition education, i.e., that provision of such information may be counted toward the one-sixth nutrition education requirement. One commenter supported this result and four commenters opposed it, stating that resources are insufficient and this would diminish the nutrition education component. In response to the concern that WIC is not adequately funded to conduct these activities, the Department would like to reiterate that no new major requirements are being imposed and that, in fact, most of the WIC responsibilities mandated by Public Law 100–690 are already common practice. It should also be noted that recent legislative (Pub. L. 101–147) and regulatory changes to the administrative funding formula will generate more, and more stable, administrative and service grants, thus ensuring States' ability to perform this program function effectively. For the reasons discussed above, no change is made to this provision in the final rule.

6. Costs for Drug and Other Harmful Substance Abuse Screening and Referral (Section 246.14)

Section 246.14(c)(9) was proposed to be added to identify drug and other harmful substance abuse screening and referral as allowable administrative and program services costs. The screening would be limited to the level deemed necessary by the State agency to determine when referrals to drug and other harmful substance abuse counseling and treatment services are appropriate. Proposed § 246.14(c)(9) also indicated that laboratory tests for the purpose of drug and other harmful substance use screening would not be allowable WIC administrative and

program services costs. As stated previously, the Department believes that allowing the cost of laboratory tests may lead to a diversion of resources which would run counter to Congressional intent that WIC's drug and other harmful substance abuse information and referral activities not detract from other vital program services.

The Department received six comments concerning the provision that the cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals to drug abuse services would be considered an allowable administrative and program services cost. All six commenters expressed concern that WIC is not adequately funded to conduct these activities. Two of these commenters suggested limiting WIC's involvement in providing drug and other harmful substance abuse information and referrals, and four commenters recommended additional funding and personnel.

The Department's rationale behind the strategy of integrating information about the danger of abusing drugs and other harmful substances into the nutrition education provided through WIC has been previously discussed in section 5 of this Preamble. It logically follows that the costs incurred for providing this information may be counted toward the nutrition education expenditure requirement. Further, should a State agency determine that screening is not a necessary part of the referral process, it may not be treated as an allowable expense. Therefore, no change is made to this provision in the final rule.

Finally, pursuant to the review and approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), § 246.28 is amended to reflect the appropriate document control numbers.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set out in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (42 U.S.C. 1786); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.1, the fourth sentence is revised to read as follows:

§ 246.1 General purpose and scope.

* * * The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons.* * *

3. In § 246.2, the definitions of *Drug* and *Other harmful substances* are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Drug means:

(a) A beverage containing alcohol;

(b) A controlled substance (having the meaning given it in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)); or

(c) A controlled substance analogue (having the meaning given it in section 102(32) of the Controlled Substance Act (21 U.S.C. 802(32)).

* * * * *

Other harmful substances means other substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus.

* * * * *

4. In § 246.4:

a. Paragraph (a)(8) is revised;

b. paragraph (a)(9) is revised;

c. paragraph (a)(11)(ii) is revised;

d. the word "and" is removed at the end of paragraph (a)(11)(iii);

e. the period at the end of paragraph (a)(11)(iv) is removed, and "; and" is added in its place; and

f. a new paragraph (a)(11)(v) is added.

The revisions and addition read as follows:

§ 246.4 State plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011–2032), the Early and Periodic Screening, Diagnosis and Treatment Program (title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601–615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701–709), the Medicaid Program (42 U.S.C. 1396 et seq.), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, and child abuse counseling.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(11) * * *

(ii) Methods for providing nutrition education, including drug and other harmful substance abuse information, to participants, including homeless individuals;

* * * * *

(v) Instructions on coordinating operations under the program with drug and other harmful substance abuse counseling and treatment services.

* * * * *

5. In § 246.7:

a. A new sentence is added at the end of paragraph (a); and

b. a new paragraph (n) is added.

The additions read as follows:

§ 246.7 Certification of participants.

(a) * * * Local agencies shall maintain and make available for distribution to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children applying for and participating in the Program a list of local resources for drug and other harmful substance abuse counseling and treatment.

* * * * *

(n) *Drug and other harmful substance abuse screening.* When a State agency determines that screening is necessary to fulfill the referral requirements in this part, the State agency must require screening for the use of drugs and other harmful substances. When such screening is required, it shall:

(1) Be limited to the extent the State agency deems necessary to fulfill the referral requirement of § 246.4(a)(8) of this part and the drug and other harmful substance abuse information requirement of § 246.11(a)(3) of this part, and

(2) Be integrated into certification process as part of the medical or nutritional assessment.

6. In § 246.11:

a. A new paragraph (a)(3) is added; and

b. paragraph (b)(1) is revised.

The addition and revision read as follows:

§ 246.11 Nutrition education.

(a) * * *

(3) As an integral part of nutrition education, the State agency shall ensure that local agencies provide drug and other harmful substance abuse information to all pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in the program. Drug and other harmful substance abuse information may also be provided to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the Program.

(b) * * *

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age, and raise awareness about the dangers of using drugs and other harmful substances during pregnancy and while breastfeeding.

* * * * *

7. In § 246.14:

a. In paragraph (c)(1) introductory text, the eighth sentence is revised; and

b. A new paragraph (c)(9) is added.

The revision and addition read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(1) * * * The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, and the cost of screening for drug other harmful substance use and making referrals to drug and other harmful substance abuse services shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. * * *

* * * * *

(9) The cost, exclusive of laboratory tests, of screening for drug and other harmful substance use and making referrals for counseling and treatment services.

* * * * *

8. In § 246.28, in the table:

a. The OMB control number for § 246.4 is removed; and

b. OMB control numbers for §§ 246.4 (a)(8), (9), (11), 246.7 (a) and (n) and 246.11(a)(3) are added.

§ 246.28 OMB control numbers.

* * * * *

7 CFR Part 246 section where requirements are described	Current OMB control no.
.4(a) (8), (9), (11)	0584-0366
.7(a)	0584-0366
.7(n)	0584-0366
.11(a)(3)	0584-0366

Dated: February 18, 1993.

George A. Braley,

Acting Assistant Secretary for Food and Consumer Services

[FR Doc. 93-4317 Filed 2-25-25; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

7 CFR Part 1703

Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the Distance Learning and Medical Link Grant Program. This final rule will promulgate regulations for a program that will provide grants for distance learning and medical link projects benefiting rural areas. The regulation is necessary to implement a rural development program created by the Rural Economic Development Act of 1990. The program will provide grants to rural community facilities, such as schools, hospitals, and medical centers, to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas and to improve rural opportunities. The regulation will establish REA's policy, the method of selecting projects to receive grants and allocating the available funds, the method of determining the beneficiaries of the program, the requirements for the application to be submitted to REA, the method of notifying potential applicants of maximum and minimum amounts of grant funds that will be considered for a single application, and the requirements for qualifying for expedited telephone loan consideration and determination.

EFFECTIVE DATE: This regulation is effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720-9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule: (1) Will not preempt any State or local laws, regulations, or policies; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Distance Learning and Medical Link Grant Program has been designed specifically to benefit small rural educational and health organizations, thus enhancing the rural environment for business formation and expansion. In response to the proposed rule some comments were received indicating that the Distance Learning and Medical Link Grant Program is too complex for those who intend to apply for grants under the program. Notwithstanding the inherent complexity of the highly technical Distance Learning and Medical Link Grant Program, REA has crafted a regulation which addresses the complexities, while requiring a minimum amount of documentation to support a grant application in order to ensure prudent use of grant funds. Further, since the application for grants under the program are discretionary, regulatory requirements will apply only to those entities which choose to apply for funding. For those relatively few entities which encounter difficulty meeting regulatory requirements for application, REA's Rural Development

Assistance Staff is available as a source of assistance.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB control number for these requirements is 0572–0096.

The public reporting and recordkeeping burden for this collection of information is estimated to average 1.85 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comment of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404-W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require the preparation of an environmental impact statement or environmental assessment.

Intergovernmental Review

The Administrator has determined that this program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. For detailed information, concerning the requirements of the Order, refer to the final rules published in 7 CFR part 3015, subpart V; 48 FR 29100, June 24, 1983.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.855, Distant Learning and Medical Link Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Comments

On May 26, 1992, REA published a proposed rule at 57 FR 21900 for a new program that would provide grant funds for distance learning and medical link projects to provide educational and medical benefits to people living in rural areas. This action was necessary to comply with Title XXIII, Subtitle D, Chapter 1 of the Rural Economic Development Act of 1990 (Act) (7 U.S.C. 950aaa *et seq.*). The purpose of the program is to provide incentives for local telephone exchange carriers, rural community facilities, and rural residents to improve the quality of phone service, to provide access to advanced telecommunications services and computer networks, and to improve rural opportunities. It is believed that the incentives of this program will contribute to achieving these Federal goals. Furthermore, a goal of the Federal Government is to make affordable advanced telecommunications available to rural residents, including services such as reliable facsimile document and data transmission, multifrequency tone signaling services, 911 emergency service with automatic number identification, interactive audio and visual transmissions, voice mail services designed to record, store, and retrieve voice messages, and other advanced telecommunications services.

REA received 44 comments regarding the proposed rule, which were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Tennessee Exceed and Visions Five Group.
(2) College of Agriculture and Life Sciences, Texas A&M University.
(3) Philips County Community College, Arkansas.
(4) Steuben Rural Electric Cooperative, Inc.
(5) Mayo Foundation, Mayo Clinic.
(6) Ira Davenport Memorial Hospital, Inc., Bath, New York.
(7) Community Memorial Hospital, Crawford, Nebraska.
(8) Cavalier Electric Cooperative, Inc.
(9) U.S. West Communications, Inc.
(10) Annette Island Medical Service Unit, Alaska.
(11) Communication and Technology, USDA Extension Service.
(12) Mountain Area Health Education Center, North Carolina.
(13) United States Telephone Association.
(14) North Central Regional Educational Laboratory, Illinois.
(15) Idaho COG.
(16) Iowa Methodist Medical Center.
(17) Association of America's Public Television Stations.
(18) National Telephone Cooperative Association.
(19) Deaconess Development Foundation, Montana.
(20) The Agricultural Satellite Corporation.
(21) National Rural Electric Cooperative Association.
(22) Center for Health Services Communication, East Carolina University.
(23) Mississippi Educational Network.
(24) Covington Electric Cooperative, Inc.
(25) Police Jury, Parish of Cameron, Louisiana.
(26) Council For Educational Development and Research.
(27) Northwest Kansas Area Health Education Center.
(28) The University of the State of New York.
(29) Valley Rural Health Cooperative, North Dakota.
(30) Regional Laboratory for Educational Improvement of The Northeast & Islands.
(31) Appalachia Educational Laboratory.
(32) New Hampshire Public Television.
(33) Southwestern Bell.
(34) East River Electric Power Cooperative.
(35) Heartland Community College, Illinois.
(36) Satellite Educational Resources Consortium, Inc.
(37) Montana State Board of Nursing.
(38) Telemedical Interactive Consultative Services, Inc.
(39) Reed, Veach, Wurdeman & Associates, Inc., Nebraska.
(40) University of Missouri-Rolla.
(41) Tele-Systems Associates, Inc.
(42) Standing Rock College, North Dakota.
(43) Honorable David R. Obey, U.S. House of Representatives.
(44) Software Valley Corporation, West Virginia.

Overall, REA received widespread support for the proposed rule, and six respondents expressed unqualified support. Other respondents generally expressed support, but made specific comments.

By far, the greatest concern on the part of the responding organizations was the definition of "rural" contained in § 1703.102. The proposed definition was adapted from the definition contained in Websters Third New International Dictionary (1981) and based on a case involving the Alaska National Interests Lands Conservation Act, *Kenaitize Indian Tribe v. State of Alaska*, 860 F2d 312, 316–317 (9 CA 1988). REA believes that under the holding of that case, the

absence of a statutory definition of "rural" in the Act means that REA must define the term in its commonly understood sense. However, this does not mean that REA must use the same methodology used by the court to arrive at what the common meaning of "rural" is when used in the Act. That methodology used by the court employed definitions used by Websters and the Bureau of the Census (Census Bureau). Although REA adopted this approach in the proposed rule, the commenters generally found the definition to be unduly restrictive in two respects.

First, commenters objected to the element of the definition of "rural" that required the economy of a rural area to be centered on "agriculture and ranching." Commenters pointed out that rural economies often center on other occupations, such as mining, timber production, and tourism. REA recognizes this and agrees that there is no evidence in the Act or its legislative history evidencing a Congressional intention to exclude rural communities that depend upon occupations other than agriculture and ranching from participating in the program. Therefore, REA has expanded the definition of rural in the rule by using the somewhat broader interpretation of "rural" found in The American Heritage Dictionary of the English Language, Third Edition (1992). As redefined, a rural area must be "sparsely settled or agricultural country." Thus, communities that are sparsely settled but do not depend on agriculture or ranching would be considered "rural" for purposes of the rule.

Second, commenters objected to the exclusion of communities having populations of 2,500 or more persons. Although they recognized that this has been the historic standard used by the Census Bureau, they pointed out that neither the Act nor its legislative history suggests REA is limited to using the Census Bureau's methodology, and Congress itself has in various statutes defined "rural" as encompassing communities much larger than 2,500 persons. Although REA recognizes that in authorizing other programs, Congress has employed a wide range of definitions of "rural" which often included much larger communities, Congress did not do so in this case. REA does not think that such an omission represents a Congressional intention that REA should feel free to choose a definition of "rural" from among statutes having no legal relevance to this program. Instead, REA believes it demonstrates an intention that REA administratively adopt a definition that is consistent with the common meaning and that does not exclude communities that are generally perceived as being rural in character. Based on responses to the proposed rule, it appears that the problem is more complex than the relatively simple dictionary definitions and Census Bureau definitions are capable of resolving. Where a community's eligibility to receive a grant for these important services depends on its being properly classified as "rural," a more rigorous definition seems warranted.

REA's implementation of a revised rural definition consists of two parts: (1) qualifying a project as serving a rural area; and (2) once a project has been determined to serve a rural area, prioritizing that project for grant funding based on the degree of rurality of its service area compared with other projects.

Qualifying a Project as Rural

Research revealed a considerable body of professional literature from various disciplines recognizing the problem of defining "what is rural" in formulating contemporary rural policy. Bell, "The Fruit of Difference: The Rural-Urban Continuum as a System of Identity," *Rural Sociology*, Vol. 57, No. 1 at 65–82 (1992). Willits et al., "Popular Images of 'Rurality': Data form a Pennsylvania Survey," Rural Sociology Vol 55, No. 4 at 559–578 (1990). Butler, Rural—Urban Continuum Codes for Metro and Nonmetro Counties, AGES 9028, United States Department of Agriculture, Economic Research Service (April 1990). Deavers, "What is Rural?" Policy Studies Journal, Vol. 20 No. 2 at 184–189 (1992). Hewitt, "Defining 'Rural' Areas: Impact on Health Care Policy and Research," Health Program, Office of Technology Assessment, United States Congress (July 1989). Rural Conditions and Trends, Economic Research Service, United States Department of Agriculture, Vol. 3, No. 1 (Spring 1992). Rural Conditions and Trends, Economic Research Service, United States Department of Agriculture, Vol. 2, No. 4 (Winter 1991/92). Although "rural" is commonly understood to mean "not urban," the concepts of "rural" and "urban" exist as part of a continuum. Rarely does a clear line of demarcation exist between what is "rural" and what is "urban". Research revealed broad support for the more sophisticated approach to defining "rural" which was developed by analysts of the Economic Research Service of the United States Department of Agriculture (ERS).

"The [ERS] typology, which is a mixture of economic and social/political dimensions, is useful for three reasons: it generally conforms with people's intuitive understanding of rurality; in a small number of categories it captures a wide variety of the most important social and economic characteristics influencing development among nonmetro counties; and it recognizes the continuing political significance of counties while at the same time illustrating that economic and political geography are different." Deavers, 187 footnotes omitted.

The ERS typology (See Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale) classifies nonmetropolitan counties on two dimensions: (1) the aggregate size of their urban populations, and (2) proximity/adjacency to metropolitan counties. The urban population follows the Census Bureau's definition. Urbanized counties are distinguished from less urbanized counties by the size of the urban population. A nonmetropolitan county's adjacency to a "metropolitan statistical area" (MSA) is defined both by shared boundaries and commuting patterns. The ERS approach emphasizes three important characteristics of rural areas that in combination make them different from urban areas: (1) small scale, low density settlement (i.e. small towns and open country), (2) distance from large urban centers (physical distance, remoteness due to geographic barriers, cultural and social isolation), and (3) specialization of the local economy (either physical or natural resource based, such as farming or dominated by a single relatively large manufacturing employer).

The ERS typology offers several particular advantages to REA in administering this program. First, it is consistent with the use of the term "rural" in the Act. Second, it is likely to produce results consistent with the holding in *Kenaitze Indian Tribe v. Alaska*. Third, the county-based classification system is objective and easy for REA to administer and for applicants to understand. Fourth, the methodology has gained wide acceptance. Fifth, the methodology has been developed and continues to be refined by an agency within this Department which is readily accessible to REA personnel and which is recognized for its technical expertise in rural demographic issues.

REA has modified the final rule in order to implement the ERS typology. The definition of "rural" has been revised to mean "any area of the county that REA determines to be sparsely settled or agricultural country". These two elements, sparse settlement or agricultural use, are generally associated with common perceptions of rurality and at least one element must be present for the project service area to be

considered "rural". The definition has been adapted from the American Heritage Dictionary. REA will employ the ERS rural urban continuum scale in determining whether the definition has been satisfied. A new § 1703.108 has been added to do this.

Section 1703.106 provides two general methods for qualifying as rural. If the project service area is located entirely within counties that are all among the lowest four categories of the continuum, they are categorically "rural" and the rural eligibility requirement is met. In all other cases, REA will determine rurality of the project service area on a case-by-case basis using features such as population size and density, urbanization, adjacency and relationship to metropolitan areas, and principal economic activity. If such analysis by REA shows that the project service area is rural, it will be so determined and the eligibility requirement is met. Where such analysis reveals that a project can reasonably be expected to benefit both urban and rural residents, REA, in order to establish eligibility, may make an appropriate allocation of the grant to assure that grant funds primarily benefit only residents of the rural areas. Provision has been made for applicants to appeal to the Administrator in those instances where the initial determination is that the project service area is not rural.

REA has added a working definition for "project service area" which is a concept REA used in defining "rural" in the final rule. The definition is consistent with the approach used in the proposed rule of emphasizing the location of the residences of the users of the project, as contrasted with the site of the project itself, in determining whether a project is eligible for funding under this subpart.

Ranking Eligible Projects for Funding

REA employs the ERS Rural Urban Continuum Scale to rank applications for funding priority once basic eligibility requirements have been established. The degree of rurality enhances the likelihood that a project will be funded. Thus even though projects that serve both rural and urban residents may sometimes qualify for funding, the inclusion of a non-rural population within a project's service area will lessen its chances for funding.

To implement the ranking system and limit the complexity of the rule, § 1703.118, Criteria for ranking applications, has been reformatted and split into three sections, § 1703.117, § 1703.118 and § 1703.119, to simplify reading and reference. Sections 1703.117 and 1703.119 as written in this final rule contain the contents of § 1703.118 as written in the proposed rule. Section 1703.118 contains the new ranking system that looks at the rural community from the county level and classifies that county based on both population and proximity to metropolitan areas, i.e., rurality.

Further, in implementing a ranking system, REA considered numerous comments stating that aggregate county population change and density ranking criteria contained in proposed rule § 1703.118(a)(2)(iii) and (iv), respectively, may not be accurate because population declines or sparsity in a rural area may be offset by an increase or heavy concentration of urban population. Therefore, REA has determined it appropriate to eliminate those ranking criteria of county population density and population decline (totalling 25 points maximum), and replace with the ranking system based on the degree of "rurality" (totalling 60 points maximum).

Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, that service area is given a ranking according to the population statistics of the county or counties in which the end user sites are located. Hubs which are also utilized as end user sites will be considered in the ranking; however, hubs which are not utilized as end user sites are excluded for ranking purposes. This system incorporates a framework based on the ERS typology discussed in the previous section.

In addition to the comments regarding the rural definition, other comments were received as follows.

One organization expressed a concern that linking urban and rural facilities would allow the majority of funds to be captured by urban institutions. REA believes that Congress intended primarily to benefit people, not institutions. The legislative history of the Act evidences a clear intention to use the benefits of technology to bring the advantages of sophisticated urban educational and medical resources to residents of rural areas. Thus urbanized entities will participate in the program but only for the express purpose of providing service to rural residents. Section 1703.103 has been revised to clarify REA policy with regard to participation by urban entities.

There were numerous comments regarding the definition of eligible entities. Among these comments were suggestions to include institutions such as regional educational laboratories, partnership, land grant university consortia, public television stations, community colleges, and nonprofit telecommunications entities such as Ag*Sat and SERC. REA believes that the regulation does not exclude such entities. However, for entities such as consortia or partnerships, applicants should keep in mind that REA will require written evidence of the applicant's legal capacity to contract with REA and to carry out the purposes of the grant for which the entity is applying. Sections 1703.103 and 1703.114(b) have been revised to clarify their references to corporate authority, incorporated organizations, and other legally recognized eligible entities that may apply for grant funding.

There were three comments suggesting more flexibility in determining those entities or groups which could serve as "recognized experts" in evaluating the need for improved educational or medical services in the proposed rural area. The intent of REA is to allow applicants flexibility to submit any qualified opinions which those applicants feel will strengthen the documentation of their applications relative to need.

There were several comments and suggestions regarding the proposed method of ranking and selecting applicants. Except for changes previously discussed, REA has determined that no further changes in the ranking and selection process are warranted.

Some organizations indicated concern regarding the required consultation with local service providers. REA recognizes these concerns; however, the requirements are necessary in order to adhere to the provisions of the Act. There were also concerns expressed about REA's authority to determine if the proposed service is provided at reasonable rates. Some were concerned that the service providers would promote inferior transport facilities even though they were capable of better quality or offer a product not based on an honest financial analysis or unduly delay the project. There was concern that REA's evaluation of service at reasonable rates could conflict with the authority of the state public utilities commissions and the Federal Communications Commission. Although REA does not intend to establish telephone exchange carrier or other telecommunications carrier rates, REA will determine for the proposed project whether appropriate service from the telephone exchange carrier or telecommunications service providers will provide the necessary service for a feasible project within a reasonable timeframe.

There were concerns that the intent of the legislation was for REA to provide grants for up to 100 percent, and that no matching funds should be required. REA has taken these concerns into consideration and recognizes that the Act provides that grants may be made for up to 100 percent of a project's cost. However, REA has determined that based upon the great need for these types of projects and the limited amount of available grant funds, limiting the amount of grant participation to 80 percent would allow REA to fund more projects. Therefore, REA was not persuaded by the comments and has determined that in this regard the regulation should remain unchanged. A few suggestions were made regarding allowance for in kind contributions, including salaries. REA recognizes that many needy rural communities have difficulty in generating cash, and § 1703.104 has been revised to allow for certain "in kind" contributions to substitute for cash. These allowances will be limited to the value of (1) equipment, facilities, and activities eligible for grant funding, (2) facilities, equipment, or activities that are described in an approved telecommunications plan, and/or (3) improvements made to real property necessary to accommodate eligible equipment, or additional real property acquired or facilities constructed to accommodate eligible equipment, such as buildings in which terminal equipment and/or transmission facilities would be located. Such improvements/items must be an integral component of an approved telecommunications plan. The present value of long-term leases of eligible equipment (with duration according to recognized industry wide standards and compatible with the type of equipment leased) may also be considered.

With regards to the payment of salaries, those costs do not qualify as an in kind contribution. The Act specifically prohibits grant funds for payment of salaries; thus prohibition of salary expenses as in kind contributions is consistent with funding limitations imposed by legislation. Section 1703.104(b) (1), (2), and (3) have been added to incorporate the in kind matching criteria.

Section 1703.103 has been revised to clarify conditions under which applicants may be eligible to receive grant funding. The rule has been clarified to replace the word schools with the term educational institutions and specifically mention organizations which are eligible to apply for grant funding, including regional educational laboratories, colleges, vocational training facilities or other educational institutions. In addition, the rule has been clarified to specifically include partnerships or consortia consisting of two or more entities, provided that at least one of those entities would be eligible individually and written evidence of legal capacity to contract with REA is submitted. The section has also been revised to clarify that while state entities operating rural community facilities are eligible for funding, state government entities which do not operate rural community facilities, or partnerships or consortia comprised of state government entities which do not operate rural community facilities, are not considered eligible applicants.

Several organizations expressed concern that § 1703.101(c) of the proposed rule indicates REA bias toward certain technologies, and thus implies that REA would give preferential treatment of certain applications based solely on the type of technology. It is REA's intent to be technologically neutral in the evaluation of project applications. The beginning language in § 1703.101(c) affirms this by stating that decisions regarding the most appropriate forms of technology for a specific area should be made by area residents and local institutions, and "...REA will not favor or mandate the use of one particular technology over another." The intent of the language in question was to conform to the provisions under the Act. REA believes that system technology should be flexible for future expansion, utilization of equipment for other purposes if needed, and integration with other systems. Section 1703.101(c) has been revised to clarify that it is generally desirable to use technology that would incidentally allow other providers or developers to purchase the elemental functions or access so other users, in addition to educational and medical users, may benefit from any transmission facilities receiving grant funding. Further, § 1703.101(c) has been revised to clarify that it is generally desirable for the project to use products and technologies that are considered open systems, and REA believes that it is desirable to use products and technologies that employ or adhere to nationally recognized standards that will permit equipment from various companies to be connected to the system, and permit the system to be connected to other systems or networks.

There was a suggestion to revise the definition of end user, to also allow use of eligible equipment by both educational institutions and medical facilities, rather than only allowing use by either an educational institution or a medical facility. REA concurs, and the definition of end user in § 1703.102 has been revised to allow dual use. Accordingly, § 1703.103 has been revised to include as eligible entities those organizations that would incorporate a dual use of facilities.

Recommendations were made that would allow grant funds to be used for the non-recurring charges associated with design, installation and administrative costs. It is the intent of REA to fund through lease or purchase the otherwise non-recurring initial costs of equipment installation and other expenses associated with eligible equipment provided those expenses would be incurred as a non-recurring initial cost of acquisition or lease. Section 1703.104 has been revised to clarify this issue.

One organization recommended that transmission facilities owned by local exchange carriers whose service is leased to the applicant be added as an eligible purpose for funding. Although the regulation does not preclude grant funds from being used for lease or purchase of transmission facilities, REA intends to get maximum benefit for the dollars invested. Thus, considering the funding limitations for this program, it is desirable to fund those projects which rely, to the extent possible, on outside sources of funding for transmission facilities which link hubs and end user sites. Generally, direct program benefits are maximized by acquiring, to the maximum extent possible, eligible equipment which will directly benefit users at end user sites and hubs. Therefore, REA will give priority to those projects which target the highest percentage of REA grant funds for eligible equipment at end user sites and hubs. However, REA recognizes that in many cases, investment in upgraded transmission facilities may in the long term result in greater project viability through lower capital investment requirements at end user sites and hubs, lower depreciation, and/or reduced system operating costs. Therefore, REA will consider funding transmission facilities for those projects where savings of capital costs or operating expenses of end user sites will be commensurate with investment in transmission facilities. Section 1703.119(b) has been revised in the final rule to clarify REA's policy on this issue and to specifically enumerate criteria for ranking applications.

Comments were received stating that the definition of telecommunications terminal equipment in the proposed rule is too limited by defining equipment as located at the end of a circuit. Therefore, it was asserted that

REA unfairly favors particular technologies since the definition excludes over the air broadcast, satellite and related wireless transmission media. The definition of telecommunications terminal equipment in the proposed rule is consistent with the statutory definition contained in the Act. However, REA recognizes that the definition as written could be interpreted as favoring particular technologies. REA does believe the clear intent of the Act is for technological neutrality and to consider all available technologies as eligible for grant funding. For regulatory clarity and consistency with the overall thrust of the Act, REA believes that revision of the definition of telecommunications terminal equipment is both necessary and appropriate. Therefore, § 1703.102 has been revised to clarify that over-the-air broadcast, satellite, coaxial cable, optical fiber, microwave and twisted pair signals can be received by end users.

REA received numerous comments questioning whether or not the proposed rule allows funding for teacher training as well as student training. In addition, questions were raised whether or not students in remote sites could be linked together as a network. Comments were also received regarding training of medical personnel. It is REA's intent to fund eligible equipment for teacher and medical personnel training and to link together remote student sites in a network. For clarification, the definition of distance learning in § 1703.102 has been revised to include connecting teachers with other teachers and students with other students. Further revision includes connections for staff training in medical and educational applications.

REA concurs with a recommendation that eligible instructional programming should include alternative types of technologies. The definition of "instructional programming" in § 1703.102 has been revised to read: "educational programming, including computer software, which would be used for tutorial purposes in connection with eligible equipment".

A comment was made regarding the conflict of interest provision in § 1703.107. The commenting organization wanted REA to define specifically what actions on the part of an applicant would constitute a conflict of interest. REA believes that it is not practical to anticipate all possible scenarios which could constitute a serious conflict of interest or the appearance of a serious conflict of interest. With this in mind, § 1703.107 will be administered on a case by case basis by the REA Administrator.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR Part 1703 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

2. Subpart C is added and reserved and subpart D of part 1703 is added to read as follows:

Subpart C—[Reserved]

Subpart D—Distance Learning and Medical Link Grant Program

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Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale

Subpart C—[Reserved]

Subpart D—Distance Learning and Medical Link Grant Program

§ 1703.100 Purpose.

The grants provided under this subpart D are to encourage, improve, and make affordable the use of advanced telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits through distance learning and medical link projects to people living in rural areas and to improve rural opportunities.

§ 1703.101 Policy.

(a) REA recognizes that the transmission of communications and information is a vital component of the infrastructure of rural areas and is necessary to promote rural development. Enhancing communication and information transmission by making affordable advanced telecommunications, computer networks, and related advanced technologies more widely available in rural areas will improve rural opportunities, promote rural economic growth, and enhance the quality of life of rural residents. To further this objective, REA will award grants under this subpart to distance learning and medical link projects that will improve the access of people residing in rural areas to improved educational, training, and medical services, and to opportunities that rely on advanced communication and information technologies to provide such services.

(b) In providing assistance under this subpart, REA will give priority to rural areas that it believes have the greatest need of enhanced communications. REA believes that generally the need is greatest in the most sparsely populated rural areas and in rural areas that are experiencing economic hardship.

(c) REA believes that the residents of rural areas and their local institutions which serve them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, REA will not favor or mandate the use of one particular technology over another. REA does believe that it is generally desirable to use technology that would incidentally allow other providers or developers to purchase the

elemental functions or access so other users, in addition to educational and medical users, may benefit from any transmission facilities receiving funding under this subpart. In addition, REA believes it is generally desirable for the project to use products and technologies that are considered open systems. Further, REA believes that it is desirable to use products and technologies that employ or adhere to nationally recognized standards that will permit equipment from various companies to be connected to the system, and permit the system to be connected to other systems or networks.

(d) Applicants are encouraged to promote projects that:

(1) Are based on sound economic and financial analysis;

(2) Take a long-term perspective; and

(3) Primarily benefit rural areas.

(e) REA electric and telephone borrowers are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(f) REA staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

§ 1703.102 Definitions.

Act—Title XXIII, subtitle D, chapter 1, of the Rural Economic Development Act of 1990 (7 U.S.C 950aaa *et seq.*).

Administrator—the Administrator of the Rural Electrification Administration or his or her designee.

Applicant—an eligible organization which applies for a grant under this subpart.

Approved purpose—a purpose that REA has specifically approved in the letter of agreement and scope of work covering the use of REA grant funds provided to the grantee.

Borrower—an entity that has outstanding electric or telephone REA and/or Rural Telephone Bank loans or loan guarantees under the provisions of the RE Act.

Communication satellite ground station complex—includes transmitters, receivers, and communications antennas at the earth station site together with the interconnecting terrestrial transmission facilities (cables, line, or microwave facilities) and modulating and demodulating equipment necessary for processing traffic received from the terrestrial distribution system prior to transmission via satellite and the traffic received from the satellite prior to transfer to terrestrial distribution systems.

Computer networks—computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Data terminal equipment—equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Demonstration project—one which the applicant agrees in writing to:

(1) Provide REA, if requested, with detailed information on the process used to organize and operate the project;

(2) Permit REA and REA's guests to make reasonable visits to the project; and

(3) Honor any other reasonable REA request to disseminate information concerning the project. Examples of information include a description of the process of incorporation, types of financing obtained, permits required by governments, amount of time required for various stages of the project, sources of technical assistance from government programs, private foundations or trade organizations, type of equipment used for the project, any experiences or lessons that the applicant will share with the public and other information which will assist REA in promoting rural opportunities to improve the use of telecommunications, computer networks, and related advanced technologies. REA will not require the disclosure of trade secrets or proprietary techniques.

Distance learning—a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating in nonrural areas to students and teachers who are located in rural areas; or

(2) Connect teachers and/or students, located in one rural area with teachers and/or students that are located in a different rural area.Eligible equipment—a communication satellite ground station complex, computer networks, data terminal equipment, fiber-optic cable, interactive video equipment, microwave transmission equipment, telecommunications transmission facilities and telecommunications terminal equipment.

Eligible organization—an incorporated entity that meets the requirements of § 1703.103.

End user—either or both of the following:

(1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, county extension services, vocational and adult training and education centers, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart; and

(2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a medical link telecommunications program through a project funded under this subpart.

End user site—a facility located in a rural area that is part of a network or telecommunications system that is utilized by end users.

Fiber optic cable—a bundle of optical transmission elements or waveguides usually consisting of a fiber core and fiber cladding that can guide a lightwave and that are incorporated into an assembly of materials that provide tensile strength and external protection.

Grant beneficiary—a person who resides in a rural area that directly benefits from a project receiving assistance with a grant provided pursuant to this subpart.

Grantee—a recipient of a grant from REA to carry out the purposes of this subpart.

Hub—originating source of a network or telecommunications system.

Instructional programming—educational programming, including computer software, which would be used for tutorial purposes in connection with eligible equipment.

Interactive video equipment—equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can verbally and visually communicate with each other, and such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement—a legal document executed by REA and the grantee that contains specific terms, conditions, requirements and understandings applicable to a particular grant.

Local telephone exchange carrier—a commercial, cooperative or mutual-type association or public body that provides

telephone service, through a local central switching office, to the subscribers within its designated service area, and between the local subscribers and the toll network.

Medical link—a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange medical information in audio, video, graphic or other format for the purpose of providing improved health care services primarily to residents of rural areas.

Project—an undertaking to provide or improve a distance learning or medical link by using financial assistance from REA under this subpart.

Project service area—the area in which at least 90% of the persons to be served by the project are likely to reside.

RE Act—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA—the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Rural—any area of the country that REA determines pursuant to § 1703.108 of this subpart to be sparsely settled or agricultural country.

Rural community facilities—facilities such as schools, libraries, hospitals, medical centers, or similar facilities, located in rural areas, or primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational and/or medical benefits primarily to residents of rural areas.

Scope of work—a detailed plan of work that has been approved by the Administrator and that will be performed by the applicant using funds provided under the grant.

Technical assistance—(1) assistance in learning to operate equipment or systems; and

(2) studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring and/or disseminating information.

Telecommunications plan—a comprehensive rural telecommunications plan submitted by an applicant in accordance with 7 U.S.C. 2333(3) and §§ 1703.114(e) and 1703.139.

Telecommunications terminal equipment—the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities—facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telephone service—telephone service as defined in section 203(a) of the RE Act (7 U.S.C. 901 *et seq.*).

§ 1703.103 Applicant eligibility.

To be eligible to receive a grant under this subpart, the applicant must be an incorporated organization or other legal entity which operates a school, college, vocational training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or other rural community facility. The applicant may be a private or municipal corporation and may be organized on a profit or non-profit basis. The applicant may also be a partnership or consortium, consisting of two or more entities, provided that at least one of those entities would be eligible individually, and provided that the partnership or consortium provides written evidence of its legal capacity to contract with REA. The state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant. A partnership or consortium which includes a state government entity which does not operate a rural community facility, also is not considered an eligible applicant. However, if a partnership or consortium lacks the capacity to contract, each individual entity must execute the Letter of Agreement on its own behalf. The applicant must be capable of using eligible equipment to provide distance learning or medical links, and provide written evidence of its legal existence and capacity to contract. The applicant must also demonstrate its ability and willingness to carry out the purposes of the grant under which it is applying. The applicant must not be delinquent on any obligation owed to the Federal Government (7 CFR parts 3015 and 3016).

§ 1703.104 Grant purposes.

(a) Grants may be used by eligible organizations for distance learning and medical link projects to finance up to 80 percent of the cost, including installation, of:

(1) Acquiring, by lease or purchase, eligible equipment;

(2) Acquiring, by lease or purchase, software to operate eligible equipment, including any related software;

(3) Acquiring or developing instructional programing;

(4) Providing technical assistance and instruction for using eligible equipment, including any related software;

(5) Engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the REA grant; and

(6) Facilities, equipment or activities and non-recurring service charges that are described in a telecommunications plan which has been approved by the Administrator.

(b) In kind matching—generally, the applicant's 20 percent contribution is required in the form of cash. However, cash may be substituted in whole or in part with certain in-kind contributions as follows:

(1) Equipment, activities and facilities as set forth in § 1703.104(a);

(2) Improvements made to real property necessary to accommodate eligible equipment;

(3) Facilities constructed to accommodate eligible equipment, such as buildings in which terminal equipment and/or transmission facilities would be located;

(4) Real property purchased or acquired for the sole purpose of accommodating distance learning and medical link facilities;

(5) The present value of long term leases of eligible equipment, with duration according to recognized industry standards and compatible with the type of equipment leased.

(c) In kind items furnished in paragraph (b)(1) of this section will be non-depreciated or new assets with established monetary value by industry standards. The value of improvements or construction in paragraphs (b)(2) and (b)(3) of this section will be established by a qualified independent real property appraiser based on the actual cost of those improvements. The value of land in paragraph (b)(4) of this section will be established by a qualified independent real property appraiser based on a market value appraisal.

(d) In kind contributions will be an integral component of an approved telecommunications plan as set forth in § 1703.139 of this subpart.

(e) In kind contributions will not consist of eligible equipment which has been subject to depreciation, or for equipment, services and labor not eligible for grant funding as set forth in § 1703.105 of this subpart.

(f) Funding may be provided for end user sites. Funding may also be provided for hubs located in rural and non-rural areas, if they are necessary to provide distance learning and/or medical link services to rural residents at end user sites. However, funding will not be provided for sites proposed as hubs if it is not demonstrated that they are an integral part of the proposed network and are necessary to transmit distance learning and/or medical link services to end users.

§ 1703.105 Ineligible grant purposes.

(a) Grants must not be used:

(1) To fund more than 80 percent of the eligible costs of a project under this subpart;

(2) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(3) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(4) To pay salaries, wages or employee benefits to medical or educational personnel;

(5) To pay for the salaries or administrative expenses of the applicant;

(6) To purchase equipment that will be owned by the local telephone exchange carrier or another telecommunications service provider;

(7) For site development, the destruction or alteration of buildings, or other activities that might adversely affect the environment or limit the choice of reasonable alternatives unless and until the requirements of § 1703.111(j) have been satisfied;

(8) To duplicate services in place on the date of the completed application to REA, or replace or substitute financial support that was previously provided;

(9) To pay costs of preparing the application package for funding under this program;

(10) To refinance indebtedness incurred prior to receipt of the completed application at REA;

(11) For projects whose sole object is merely to provide links between teachers and students who are located at the same facility;

(12) For any purpose that the Administrator has not specifically approved; or

(13) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*).

(b) Except as otherwise provided in § 1703.140, funds will not be used to finance a project in part when success of the project is dependent upon the receipt of additional funding under this subpart or is dependent upon the receipt of other funding that is not assured.

(c) Grants must not be used to cover the costs of telecommunications transmission facilities if the local telephone exchange carrier for the project area will install such facilities through the use of the expedited telephone loans made under the RE Act or through other financing procedures within a reasonable time period and at a cost that does not destroy the feasibility of the project, as determined by the Administrator.

(d) Except for leases provided in § 1703.104(a)(1) and (2), grants must not be used to pay the cost of recurring or operating expenses for the project.

§ 1703.106 Maximum and minimum sizes of a grant.

Applications for grants to be considered under this subpart will be subject to limitations on the proposed amounts of funding. The maximum grant amount that will be awarded for any one project in any given fiscal year will not exceed 10 percent of the appropriated funds available for all grants during the fiscal year in which the application for such project is selected. The Administrator may publish notice of the annual maximum grant amount in the **Federal Register**. An applicant submitting an application which exceeds the maximum will be notified to that effect by REA and given the opportunity to revise the application. The minimum size of a grant will be $10,000.

§ 1703.107 Conflicts of interest.

At any time prior to the disbursement of a grant awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgement of the Administrator, the project would create a serious conflict of interest or the appearance of a serious conflict of interest. The Administrator will notify the applicant in writing of his/her intention to disqualify the project under this section and set forth the basis for his/her determination that a serious conflict of interest or appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant's response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. The Administrator will promptly notify the applicant of the final determination whether a serious conflict of interest or appearance of a serious conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator's decision under this section will be final.

§ 1703.108 Determining what is rural.

The REA Assistant Administrator for Economic Development and Technical Services shall determine whether a project service area possesses sufficient characteristics to be considered a rural area for purposes of this subpart. The Assistant Administrator shall make such determination on the following basis:

(a) The project service area is located within a non-metropolitan county that is included in one of the lowest four categories (6–9) of the ERS Rural Urban Continuum Scale (rural urban continuum) as set forth in Appendix A to this subpart. Those categories are as follows:

(1) Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of less than 20,000, adjacent to a metropolitan area (category 6);

(2) Urban population of less than 20,000, not adjacent to a metropolitan area (category 7);

(3) Completely rural (no cities, towns, villages or other incorporated areas of 2,500 or greater) adjacent to a metropolitan area (category 8);

(4) Completely rural, not adjacent to a metropolitan area (category 9).

(b) In the case of project service areas not categorized as rural areas under paragraph (a) of this section, consideration will be given to the degree of rurality the area possesses taking into account such factors as:

(1) Whether the project service area is located within the boundaries of an incorporated community of 2,500 persons or more as determined by the U.S. Census Bureau;

(2) Where the county or counties in which the project service area is located

ranks or rank on the rural urban continuum;

(3) Whether natural geographic barriers or an absence of roads may impede access from the project service area to metropolitan areas;

(4) Whether the county is a spatially large county and the project service area is far from an urbanized area; and

(5) Whether the economy of the project service area centers on natural resource-based activities such as farming, ranching, mining or timber production or is highly specialized.

(c) In the case of a project that will serve end users located in more than one county, at least one of which is not categorized as rural under paragraph (a) of this section, REA will determine the rurality of the project service area case-by-case using factors such as those identified in paragraph (b) of this section. To the extent practicable, in the case of a project that is expected to benefit residents of urban areas as well as residents of rural areas, instead of rejecting an application because it benefits areas that are not rural, REA may allocate the grant accordingly to assure that grant funds primarily benefit only residents of rural areas.

(d) If a determination made under this section results in the denial of an application, the applicant may appeal such determination to the Administrator in writing setting forth the reasons why it disagrees. Thereafter, the Administrator will review the determination and decide in writing whether to sustain, reverse or modify the original determination. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

§§ 1703.109—1703.110 [Reserved]

§ 1703.111 Compliance with other Federal statutes and regulations.

(a) *Equal opportunity and nondiscrimination requirements.* All grants made under this subpart are subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, as amended, (7 CFR part 15); Section 504 of the Rehabilitation Act of 1973, as amended, (7 CFR part 15b); the Age Discrimination Act of 1975, as amended, (45 CFR part 90); and Executive Order 11246, as amended by Executive Order 11375.

(b) *Architectural barriers.* All facilities financed with REA grants that are open to the public, or in which physically handicapped persons may be employed or reside, must be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, and with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR subpart 101–19.6).

(c) *Flood hazard area precautions.* In accordance with part 1788 of this title, if the project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 through 4128). The insurance must cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA will comply with Executive Order 11988, Floodplain Management, in considering the application for the project.

(d) *Real property acquisition.* Acquisition of real property in connection with this program is subject to 7 CFR part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and federally Assisted Programs. Owners of real property acquired under Federal or federally-assisted programs, and persons displaced from their dwellings, businesses, or farms as a result of such an acquisition, must be provided fair, consistent, and equitable treatment, as defined by 7 CFR part 21.

(e) *Drug-free workplace.* Grants made under this subpart are subject to the requirements set forth in 7 CFR part 3017, Subpart F, Drug-Free Workplace Requirements, which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*). An applicant requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(f) *Debarment and suspension.* The requirements of Executive Order 12549, Debarment and Suspension, and 7 CFR part 3017, Subparts A through E, Governmentwide Debarment and Suspension (Nonprocurement), regarding debarment and suspension are applicable to this subpart.

(g) *Intergovernmental review of Federal programs.* This program is subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs and 7 CFR part 3015, Subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities, which implements Executive Order 12372. Proposed projects are subject to the State and local government review process set forth in part 3015 of this title. Under the review process, State and local governments have 60 days to comment on the proposed project. The Administrator will not give final approval to an application until the requirements of subpart V, part 3015 of this title, regarding State and local government review have been satisfied.

(h) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and the implementing regulation, part 3018 of this title, New Restrictions on Lobbying, are applicable to this program. The regulation that implements this statute requires applicants for a grant in excess of $100,000 to file a certification statement regarding the use of federally appropriated funds to lobby the Executive and Legislative branches of the Federal Government and to file a disclosure form if engaged in these activities using unappropriated funds. In addition, persons that receive subgrants, contracts or subcontracts in excess of $100,000 under a grant must file certification statements regarding lobbying the Executive and Legislative branches and, if engaged in these activities, to file disclosure forms.

(i) *Management assistance.* REA will monitor grant recipients as necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to parts 3015 through 3018 of this title.

(j) *Environment.* Applicants for grants must consider the potential environmental impact of their proposed projects at the earliest planning stage and should plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely. Grants made under this subpart are subject to part 1794 of this chapter which contains the policies and procedures of REA for implementing a variety of Federal statutes, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in § 1794.1 of this chapter.

§ 1703.112 [Reserved]

§ 1703.113 Application filing dates and location.

(a) Applications for funding under this subpart may be submitted to the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–

1500. Applications should be marked "Attention: Assistant Administrator, Economic Development and Technical Services."

(b) Applicants may file applications at any time during a fiscal year period. Applications will be reviewed for eligibility and considered for funding on a quarterly basis. Application cut-off dates for consideration in a particular quarterly period are on the fourteenth day of January, April, July, and October of each year. Applications which are considered eligible but are not selected for funding in a quarter will be considered for funding in the following quarter(s) for not more than four quarters in total consideration unless withdrawn sooner by the applicant. An application considered in four consecutive quarters and not selected for funding will be returned to the applicant. The Administrator may establish a special selection period in an extraordinary circumstance.

§ 1703.114 Application processing and contents.

For instances where multiple applicants are necessary to carry out a project due to project feasibility or applicant authorities, multiple applications may be submitted jointly by the applicants. The applicants must clearly mark or otherwise identify any information in the application it deems proprietary. The application consists of:

(a) *An application form.* The applicant must provide an original and one copy of a completed SF 424 "Application for Federal Assistance." The applicant must submit a copy of the application to the State government point of contact at the same time it submits the application to REA. All applications must be accompanied by the information described in paragraphs (a) through (n) of this section.

(b) *Evidence of legal existence and authority.* The applicant must provide evidence of its legal existence and authority to execute the letter of agreement and perform the activities under the grant, and an opinion by its attorney that it is legally formed according to state statutes and has authority to execute the letter of agreement and perform the proposed activities under the grant and to comply with the provisions of this subpart.

(c) *A board resolution.* The applicant must provide a board resolution or equivalent that:

(1) Authorizes the request of a grant under this subpart in the amount required to the nearest hundred dollars; and

(2) Authorizes appropriate applicant official(s) by name or title to requisition grant funds and execute all documents required by REA under this subpart.

(d) *Miscellaneous Federal forms.* The applicant must provide the following completed forms:

(1) "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction" (See 7 CFR 3017.510.);

(2) An assurance statement or certification statement required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if appropriate;

(3) "Certification Regarding Drug-Free Workplace Requirements (Grants)" (See 7 CFR 3017.600.); and

(4) For an application for a grant in excess of $100,000, a certification statement, "Certification Regarding Lobbying;" and, if the applicant is engaged in lobby activities described under § 1703.111(h) of this subpart, a completed disclosure form, "Disclosure of Lobbying Activities" (See 7 CFR part 3018.). Copies of these certifications are available upon request.

(e) *A telecommunications plan.* The applicant must provide a Telecommunications Plan prepared in accordance with § 1703.139 and placed in a separate section of this application entitled "Comprehensive Rural Telecommunications Plan."

(f) *A section on compliance with ranking criteria.* The applicant must provide an explanation of how the proposed project meets each of the criteria for making applications set forth in §§ 1703.117 through 1703.119.

(g) *A section on compliance with technical standards.* The applicant must provide an explanation of how the plan complies with generally accepted standards for advanced telecommunications systems and any specific technical standards otherwise established by the Administrator pursuant to published regulations.

(h) *Financial information.* The applicant must provide the latest financial information to support the need for grant funds for the project, and to show its financial capacity to carry out the proposed work. At a minimum, the information should include a balance sheet and income statement. A current audit report is preferred.

(i) *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a project similar to the proposed project.

(j) *Funding commitments from other sources.* The applicant must provide evidence of commitment of funds for the project in addition to the funds requested under this subpart. Evidence should be from an authorized representative of the source organization that the funds are available and will be used for the proposed project.

(k) *Environmental information.* The applicant must provide environmental information which shall be prepared in accordance with § 1703.138 and placed in a separate section entitled "Environmental Impact of the Project."

(l) *The proposed scope of work.* The applicant must provide a proposed scope of work which includes, at a minimum, the following:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The timeframes for accomplishing the project objectives and activities; and

(4) A budget reflecting the line item costs for both the grant funds and other sources of funds for the project.

(m) *The proposed evaluation methodology.* The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in §§ 1703.100 and 1703.101 of this subpart and the proposed scope of work.

(n) *Supplemental information.* The applicant should provide any additional information the applicant considers relevant to the project and likely to be helpful in determining the extent to which the proposed project would further the purposes of this subpart.

(o) *Additional Information Requested by REA.* The applicant must provide any additional information the Administrator may consider relevant to the application and necessary to adequately evaluate the application and make grant decisions. The Administrator may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in a grant application submitted under this subpart.

§ 1703.115 Public notice of applications received.

On or about the 25th day of January, April, July, and October of each year, the Administrator will publish notice in the **Federal Register** of the applications received for funding under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, by any telecommunications provider described in section 2333(f) of the Act. For purposes of this section, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C.

552a, and any other information that has not been designated as proprietary information by the applicant.

§ 1703.116 [Reserved]

§ 1703.117 Criteria for ranking applications.

The criteria in this section and §§ 1703.118 and 1703.119 will be used by the Administrator to rank applications that have been determined to be in compliance with the requirements of this subpart. Applications will be selected for funding that receive the greatest number of total points based on the following factors, subject to available funds and provisions of § 1703.119. The Administrator will make determinations regarding the reasonableness of all numbers, dollars, levels and rates, as well as the nature, cost, location and other characteristics of the application and the proposed project, to determine the number of points assigned to an application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.114 will be rated as a single application.

(a) Project worthiness criteria include:

(1) The extent to which the project will encourage and improve the use of advanced telecommunications, computer networks, and related advanced technologies to provide quality educational and/or medical benefits to residents of rural areas. The Administrator will consider the overall design of the project, the manner in which the project will improve access of rural residents to improved educational, training, and medical services using advanced communication and information links, the technologies to be employed in the project, and whether the educational and/or medical benefits of the project will be made accessible to rural residents through the use of advanced telecommunications, computer networks, and related advanced technologies—up to 15 points;

(2) The nature and extent of the benefits of the project given the cost of the project. The Administrator will evaluate the applicant's analysis of the benefits and cost of the project. The applicant should quantify the benefits and cost to the extent possible and propose projects that maximize net benefits. Examples of educational benefits include offering the students in a rural school more advanced or specialized courses, meeting curriculum requirements, providing a means to train and develop the teaching staff of a rural school, establishing a means to access information that is not available locally, offering job training, continuing education, and higher education courses or degrees to rural residents, and offering job training options for rural residents. Examples of medical benefits include affording rural physicians and medical professional access to support functions such as consulting with others on a diagnosis or the latest recommendations in treatment procedures and techniques, up-to-date health-care research, and continuing medical studies. Other benefits include retaining more patients at rural hospitals and medical facilities, preventing the closure of rural hospitals and medical facilities, retaining more medical care professionals in rural areas, and reducing the potential complications and costs of travel for patients. The Administrator will take into consideration the number of rural residents to be served or directly receive the benefits of the project. The benefit-cost analysis will consider both the recurring benefits and the non-recurring benefits to the rural residents from project. The costs will be reviewed on the basis of capital investments costs, other non-recurring costs, and the recurring costs over the life of the project. Applicants should address these costs separately. The Administrator will compare the benefits to the costs in determining the cost-effectiveness of the project and the number of points that will be assigned to an application—up to 20 points;

(3) The extent to which the proposed methods of performing the project relating to buying or leasing equipment are the most cost-effective for the type of project proposed. The application must contain information necessary for the Administrator to use accepted financial methodologies to determine whether the applicant is proposing the most cost-effective option—up to 10 points;

(4) The demonstrated capability, experience, and knowledge of the applicant and others who will be active in the proposed project for carrying out the project purpose—up to 10 points;

(5) The extent to which the proposed techniques or designs have been proven in similar projects created for the rural environment and will offer quality educational and medical benefits—up to 10 points;

(6) The project concept and design are well developed to ensure that the project has a high probability of accomplishing its objectives and will likely result in long-term success as measured by improved educational and medical benefits to rural residents—up to 10 points; and

(7) Whether or not the project will be a demonstration project and the project can be duplicated or applied to other rural areas—up to 5 points.

(b) Criteria on the financial capabilities and needs of the applicant include:

(1) Whether the applicant is unable to finance, at reasonable rates and terms, the proposed project without the grant funds requested under this subpart—up to 60 points. REA will consider:

(i) The demonstrated financial need of the applicant based on financial statements and potential sources of revenues;

(ii) Whether the applicant has the ability to finance the entire project without grant funds or whether the addition of the grant funds will make the project feasible that otherwise would be unfeasible due to the rural nature of the affected area; and

(iii) Whether it is likely that the proposed project will be undertaken or completed in the absence of an REA grant.

(2) Evidence of additional financial support for the project. For applications that receive the highest number of points under paragraph (a)(2)(i) of this section, evidence of additional financial support for the project from nonFederal sources above the required 20 percent supplement to the project; including evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project:

(i) More than 30 percent and less than 40 percent supplemental funds—5 points; or

(ii) 40 percent or more supplemental funds—10 points.

(c) Criteria on the need of the affected rural communities for the project that include:

(1) The extent to which the need for improved educational or medical services in the proposed rural area compared to other regions is well documented. REA will also consider any support by recognized experts in the related educational or medical field—up to 25 points.

(2) A comparison of the per capita personal income in the county or counties where the project or the beneficiaries are located to the state and national per capita personal income levels.

(i) If the per capital personal income level in the county where the grant beneficiaries will be located:

(A) Is less than or equal to 90 percent of the National per capita personal income level—15 points, the maximum number of points;

(B) Is equal to the National per capita personal income level—5 points; or

(C) Exceeds the National per capita personal income level by 15 percent or more—0 points.

(ii) If the per capita personal income level in the county or counties where the grant beneficiaries will be located:

(A) Is less than or equal to 90 percent of the state per capita personal income level—8 points, the maximum number of points;

(B) Is equal to the state per capita personal income level—4 points; or

(C) Exceeds the state per capita personal income level by 15 percent or more—0 points.

(iii) Per capita personal income levels falling between these national or state levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of 1/2 or greater equals 1.

(iv) If the project will serve grant beneficiaries in several counties, the Administrator will use a simple average (mean) of the counties for the comparison.

(v) REA will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S Department of Commerce or other government sources and processed into a suitable format.

§ 1703.118 The comparative rurality of the proposed project service area.

This criterion is used after a project service area has been determined eligible in accordance with § 1703.108 of this subpart. The methodology contained in this section is used to evaluate the relative rurality (i.e., population and isolation) of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, that service area is given a ranking according to the characteristics of the county(ies) in which the end user sites are located. Evaluation is based on the population of the county or counties, and the location of the county or counties relative to metropolitan statistical areas. This system incorporates a framework based on the classification of nonmetropolitan counties by urbanization and proximity to metropolitan areas, developed by analysts and demographers at the U.S.D.A. Economic Research Service (ERS), as set forth in Appendix A to this subpart.

(a) The following definitions are used in the evaluation of rurality:

(1) Metropolitan statistical area (MSA)—as defined by the Office of Management and Budget (OMB), an MSA includes core counties containing a city of 50,000 or greater population or containing several smaller cities totaling 50,000 or greater population and a total population of at least 100,000. Additional contiguous counties are included in the MSA if they are economically and socially integrated with the core county.

(2) Metropolitan County—defined by OMB, a metropolitan county is part of an MSA and contains a place, or two adjoining places, totaling at least 50,000 in population, and has residents who are economically and socially integrated with a metropolitan core.

(3) Adjacency to Metropolitan area—the proximity of a county to a MSA measured by a shared boundary with a MSA, and having at least 2 percent of employed county residents commuting to MSA's for employment.

(b) If the end user site(s) for the project are located in a non-metropolitan county or counties (ERS Rural—Urban Continuum Scale categories 4–9 as set forth in Appendix A to this subpart) with the following characteristics:

(1) With an ERS category of 9–60 points, the maximum number of points;

(2) With an ERS category of 8–55 points;

(3) With an ERS category of 7–35 points;

(4) With an ERS category of 6–30 points;

(5) With an ERS category of 5–10 points;

(6) With an ERS category of 4–5 points; or

(7) Metropolitan Counties, ERS categories 0–3–0 points.

(c) Applicants having proposed end user sites located in a nonmetropolitan county or counties which are adjacent to a metropolitan area may receive an adjustment of up to 5 additional points, as determined by the Administrator. Applicants must document that the end users are isolated from urban centers by virtue of available mass transportation, highway infrastructure, or geography.

(d) Applicants having proposed user sites located in a metropolitan county or counties (ERS categories 0–3) may receive 10 points if the population density of the county or counties is no greater than 110 percent of the adjoining nonmetropolitan county with the lowest population density.

(e) If all the end user sites in a proposed network or system are located in a single county or in multiple counties which have the same characteristics, a rating will be assigned directly from one of the categories set forth in § 1703.118(b).

(f) If end user sites are located in multiple counties with different characteristics, a weighted average will be calculated using the following methodology:

(1) The total number of end user sites located in rural areas will be determined and be assigned a uniform percentage to be used in a weighted average formula (e.g., with 5 sites, each site would be weighted 20%). A hub will not be counted in a weighted average unless the hub is also utilized as an end user site. For purposes of ranking, if a hub also is utilized as an end user site, the hub will be considered as an end user site.

(2) The counties which contain end user sites will be identified.

(3) Each end user site will be assigned a number of points according to the classification system for the county in which it is located.

(4) The percentage value for each site determined in step 1 will be multiplied by the number of points scored from the site's county classification.

(5) The total points for each end user site, obtained from the calculations in step 4, will be added to reach a final weighted average for the project.

(g) The following example illustrates the provision of paragraph (f) of this section.

Example Calculation. Greenbriar Valley Development Authority has submitted an application for an interactive classroom network which includes a hub in a metropolitan area and 3 end user sites, located in 3 rural counties. The hub is located in a large city and is not utilized as an end user site, so the hub will not be considered part of the network or system.

The first end user site is located in the town of Midway, in Greenbriar County, which has an aggregate urban population of less than 20,000, adjacent to a metropolitan area. Thus, it has a category of 6 on the ERS Rural—Urban Continuum Scale.

The second end user site is in Lewistown, in Lewis County, which has an aggregate urban population of less than 20,000, not adjacent to a metropolitan area. Thus, it has a category of 7 on the ERS Rural—Urban Continuum Scale.

The third end user site is in the town of Rocky Creek, in Fayette County, which has an aggregate urban population of 20,000 or more, but not adjacent to a metropolitan area. Thus, it has a category of 5 on the ERS Rural—Urban Continuum Scale.

Step (1) The total number of end user sites = 3; thus each end user site receives 33% weight in the formula.

Step (2) The counties identified are Greenbriar, Lewis and Fayette.

Step (3) Greenbriar County, ERS Rural—Urban Continuum Scale category 6 = 30 points;

Lewis County, ERS Rural—Urban Continuum Scale category 7 = 35 points;

Fayette County, ERS Rural—Urban Continuum Scale category 5 = 10 points.

Step (4) Midway site—30 points x 33% = 9.9 points

Lewistown site—35 points x 33% = 11.6 points

Rocky Creek site—10 points x 33% = 3.3 points

Step (5) 9.9 + 11.6 + 3.3 = 24.8 total weighted average score

§ 1703.119 Other application ranking criteria.

(a) Proposed projects for telecommunications transmission facilities to be funded under this subpart will be jointly shared by other projects that would enhance the purpose(s) of this subpart—up to 50 points.

(b) Projects that use telecommunications transmission facilities and/or computer networks not financed through grants under this subpart for which the applicant has obtained a certification that the carrier will provide the facilities necessary for the project—up to 25 points.

(1) In determining the number of points an applicant will receive, REA will consider:

(i) Whether 0 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—25 points, the maximum number of points;

(ii) Whether less than 25 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—10 points;

(iii) Whether 25 to 40 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—5 points;

(iv) Whether over 40 percent of the REA grant will be used for the cost of transmission facilities and/or computer networks—0 points.

(2) Notwithstanding the percentage of REA financing requested for transmission facilities and/or computer networks, up to 15 additional points may be awarded for those projects in which it is clearly demonstrated that grant funded costs for transmission facilities will yield a corresponding reduction in capital costs or operating expenses of end user sites and hubs.

(c) Projects that have the greatest probability of long-term success of fulfilling the purpose and policy goals of this subpart—to 20 points.

(d) Regardless of the number of points an application may receive, the Administrator may:

(1) Limit the number of applications selected for projects located in any one state during a fiscal year;

(2) Limit the number of selected applications for an applicant during a fiscal year;

(3) Limit the number of selected applications for a particular project; and

(4) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher ranked application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if the Administrator determines the project is feasible at the lower amount.

(e) REA reserves the right to use the region or other data it considers most appropriate if "county" data are unavailable for a particular area. In those cases, the Administrator will use data compiled on a basis of the equivalent of a county in the state, such as a parish, or on another basis that most approximates "county" level data.

§ 1703.120—1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the selection of the application and the execution of implementing documents, the applicant must inform the Administrator if the project is no longer viable or the applicant no longer desires a grant for the project. If the applicant so informs the Administrator, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to the Administrator for consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) After an applicant has submitted such additional information, if any, the Administrator determines is necessary for completing the grant documents, the Administrator will send the documents to the applicant to execute and return to REA.

(1) The grant documents will include a letter of agreement and any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement will, among other things, constitute the Administrator's approval of funds for the project subject to certain terms and conditions and include at a minimum, a project description, approved purposes of the grant, the maximum amount of the grant, supplemental funds to be provided to the project and certain agreements or commitments the applicant may have proposed in its application.

(e) Until the letter of agreement has been executed and delivered by REA and by the applicant, the Administrator reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the United States Government.

(f) If the applicant fails to submit, within 120 calendar days from the date of the Administrator's selection of an application, all of the information that the Administrator determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, the Administrator may rescind the selection of the application and written notice to that effect will be sent promptly to the applicant.

§ 1703.123—1703.125 [Reserved]

§ 1703.126 Disbursement of grant funds.

(a) Prior to the disbursement of funds, the grantee, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by § 3015.17 of this title.

(b) Grant funds will be disbursed to grantees on a reimbursement basis by the following process:

(1) An SF 270, "Request for Advance or Reimbursement," will be completed by the applicant and submitted to REA not more frequently than once a month; and

(2) After receipt of a properly completed SF 270, payment will ordinarily be made within 30 days.

(c) The grantee's share in the cost of the project will be disbursed in advance of grant funds, or if the grantee agrees, on a pro rata distribution basis with grant funds during the disbursement period. Grantee will not be permitted to provide its contribution at the end of the project.

§ 1703.127 Reporting and oversight requirements.

(a) An SF 269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis.

(b) A final project performance report will be required with the last SF 269. The final report also must provide an

evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last quarterly report.

(c) Grantees shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original and one copy of each report to REA. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

The grantee will provide an audit report in accordance with part 3015, subpart I, of this title. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards (GAGAS) using publication, "Standards for Audit of Governmental Organization, Programs, Activities and Functions."

§ 1703.129—1703.134 [Reserved]

§ 1703.135 Grant administration.

(a) The Administrator will review grantees, as necessary, to determine whether funds were expended for approved purposes. The grantee is responsible for ensuring that the project complies with all applicable regulations, and that the grant funds are expended only for approved purposes. The grantee is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, cancelled checks, or other appropriate forms of evidence, and that such supporting material is provided to the Administrator, upon request, and is otherwise made available, at the grantee's premises, for review by the REA representatives, grantee's certified public accountant, the office of Inspector General, U.S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the grantee's financial statements or records, and program performance under the grant awarded under this subpart. Grantees will be required to permit REA to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to parts 3015 and 3016 of this title, as appropriate. Parts 3015 and 3016 of this title subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and/or equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The grantee will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.137 Grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any grant in whole, or in part, at any time before the date of completion of grant disbursement, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Administrator will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* The Administrator or the grantee may terminate a grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The grantee will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the grantee for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.

§ 1703.138 Environmental information.

(a) *Grants for technical assistance projects.* For a proposal to fund a technical assistance project, the only environmental information normally required is whether or not the proposed project being studied or analyzed will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*). Generally, the use of Federal funds to promote development on coastal barriers is strictly limited by the Coastal Barrier Resources Act.

(b) *Grants for all other projects.* Applications for a grant to fund a project that is not subject to paragraph (a) of this section must be accompanied by the information described in this paragraph. The Administrator will review supporting materials in the application and initiate an environmental review process pursuant to part 1794 of this chapter. This process will focus on any environmental concerns or problems that are associated with the project. The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500—1508), REA's Environmental Policies and Procedures (part 1794 of this chapter) and other relevant Federal environmental laws, regulations and Executive Orders. Activity related to the project that may adversely affect the environment or limit the choice of reasonable alternatives shall not be undertaken prior to completion of REA's environmental review process.

(1) For a proposed project that only involves internal modifications or equipment additions to buildings or other structures (for example; relocating interior walls or adding computer facilities) and/or external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than 0.4 hectare (0.99 acre) the environmental information normally required is:

(i) A description of the internal modifications or equipment additions, and the external changes or additions to existing buildings, structures or facilities being proposed, the size of the site in hectares, and the general nature of the proposed use of the facilities once the project is completed, including any

hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated; and

(ii) Whether the project site contains or is near a property listed or eligible for listing in the National Register of Historic Places (16 U.S.C. 470).

(2) For all other proposed projects that do not meet the requirements in paragraph (a) or (b)(1) of this section, the environmental impact discussion in the application should include:

(i) A diagram showing the general layout of the proposed facilities on the project site;

(ii) The size of the project site in hectares;

(iii) A map (preferably a U.S. Geological Survey map) of the project area indicating the boundaries of the project;

(iv) The presence of floodplains at the project site;

(v) The amount of property to be cleared, excavated, fenced or otherwise disturbed by the project;

(vi) The current land use and zoning of the project site and any vegetation on the project site;

(vii) Buildings or other major structures, including dimensions, to be constructed or modified;

(viii) The presence of wetlands or existing agricultural operations at the project site; properties listed or eligible for listing in the National Register of Historic Places on or near the project site; threatened or endangered species or critical habitat on or near the project site (16 U.S.C. 1531 *et seq.*);

(ix) The general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated (42 U.S.C. 4321 *et seq.*); and

(x) A copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to fulfill the requirements of this section.

(3) REA may request additional environmental information in specific cases to satisfy § 1703.111(j).

§ 1703.139 Telecommunications plan.

A telecommunications plan submitted pursuant to this subpart must include:

(a) A detailed explanation of the proposed rural telecommunications system project to be funded under this subpart, how the project is to be funded, and a description of the intended uses for the grant received from REA under this subpart. This must include a breakdown of the specific uses of the grant funds requested under this subpart and the specific uses and sources of all funds necessary to ensure completion of the project. Project costs should be limited to the amount of funds to be expended over the grant performance period;

(b) An explanation of the manner in which such plan complies with the requirements set forth under this subpart regarding how the proposed project will fulfill the purpose and policies of the Distance Learning and Medical Link Grant Program;

(c) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund under a grant received under this subpart;

(d) An explanation of the special financial or other needs of the affected rural communities and of the applicant for grant assistance under this subpart;

(e) An analysis of the relative costs and benefits of proposals for leasing or purchasing of facilities, equipment, components, hardware and software, or other items; and

(f) A description of the consultations with the appropriate local telephone exchange carrier(s), if appropriate for the project, or with other telecommunications service providers appropriate for the project which include other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors. The plan must discuss the anticipated role of any these providers in the project. Consultations are considered necessary if the proposed project will rely on these services for project success. The description should contain, at a minimum, identification of the proposed project area, the authorized individuals representing those entities, the date of contact, and the anticipated role of the entity(s) in the proposed project. It must include an explanation of the local telephone exchange carrier or other telecommunications service providers' capabilities relative to the proposed project and whether they will provide any portion of the needed service for the proposed project, whether their short-term plan (1 year) or long-term plan includes capability to provide the service for the proposed project, and whether the telephone exchange carrier(s) or other telecommunications service providers, as appropriate, will charge reasonable rates. If the rates to be charged are considered to be unreasonable, a basis for that determination must be provided. The Administrator will determine whether appropriate service from the telephone exchange carrier(s) or telecommunications service providers, as appropriate, can and will provide the needed service necessary to the project at reasonable rates and within a reasonable timeframe.

§ 1703.140 Expedited telephone loans.

(a) *General.* (1) The Administrator will afford expedited consideration and determination to an application for a loan or a request for advance of funds submitted by a local telephone exchange carrier pursuant to section 2334(h) of the Act (7 U.S.C. 950aaa *et seq.*).

(2) Funds obtained through the expedited procedures established by this section must be used primarily to provide advanced telecommunications services in rural areas using a telecommunications project that the Administrator has approved under this subpart.

(3) Only those elements of a telecommunications project that have not been funded in whole, or in part, with a grant made under this subpart are eligible for expedited consideration or determination under this section.

(b) *Expedited loan applications.* (1) In order to qualify for expedited consideration or determination under paragraph (a)(1) of this section, the loan application must:

(i) Be from a local telephone exchange carrier that will use the requested funds for the purpose set forth in paragraph (a)(2) of this section;

(ii) Be a completed one that complies with the requirements of part 1737, subpart C, of this chapter; and

(iii) Be received concurrently with the related grant application or within 14 days of the date notice of such application is published in the **Federal Register** as set forth in § 1703.115.

(2) Expedited consideration and determination of a qualifying application for a loan under this section means that within 45 days of receipt or 45 days of selection of the related grant

application, whichever occurs later, the Administrator will:

(i) Issue a characteristics letter, as set forth in part 1737, subpart I, of this chapter, to the loan applicant; or

(ii) Inform the loan applicant that its application for a loan has been denied.

(c) *Expedited advances.* (1) In order to qualify for expedited consideration or determination under paragraph (a)(1) of this section, the request for advance of funds must:

(i) Be from a local telephone exchange carrier that will use the funds for the purpose set forth in paragraph (a)(2) of this section;

(ii) Be for all or part of a loan which has received release approval pursuant to part 1737, subpart K, of this chapter; and

(iii) Be in compliance with the requirements of part 1744 of this chapter.

(2) Expedited consideration and determination of a qualifying request for advance of loan funds under this section means that the Administrator will advance funds to the borrower within 45 days of receiving a request which complies with the provision of this section.

Appendix A to Subpart D of Part 1703—ERS Rural-Urban Continuum Scale

ERS Rural-Urban Continuum Scale

Category	
	Metropolitan Counties
0	Central counties of metropolitan areas of 1 million population or more.
1	Fringe counties of metropolitan areas of 1 million population or more.
2	Counties in metropolitan areas of 250 thousand to 1 million population.
3	Counties in metropolitan areas of less than 250 thousand population.
	Nonmetropolitan Counties
4	Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of 20,000 or more, adjacent to metropolitan area.
5	Aggregate urban population of 20,000 or more, not adjacent to a metropolitan area.
6	Aggregate urban population of less than 20,000, adjacent to a metropolitan area.
7	Aggregate urban population of less than 20,000, not adjacent to a metropolitan area.
8	Completely rural (no cities, towns, villages or other incorporated areas of 2,500 or greater) adjacent to a metropolitan area.
9	Completely rural, not adjacent to a metropolitan area.

Notes: Metropolitan status is that which was first announced by the Office of Management and Budget in June 1983, when the codes were first applied to results of the 1980 Census. Adjacency was determined by physical boundary adjacency and a finding that at least 2 percent of the employed labor force in the nonmetropolitan county commuted to metropolitan central counties.

Categories prepared in Economic Development Division, Economic Research Service, USDA.

Dated: February 18, 1993.

Charles Kennick,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc 93-4167 Filed 2-25-93; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-39; Amendment 39-8489; AD 93-02-07]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc., Model 412 helicopters, that currently requires inspection of the vertical fin spar cap assembly every 20 hours time in service until the assembly is replaced with a cold-bonded assembly. This amendment requires inspection of the cold-bonded assembly every 25 hours time in service until it is replaced with a hot-bonded assembly. This amendment is prompted by reports that certain assemblies modified in accordance with AD 85-17-03R1 failed in service. The actions specified by this AD are intended to prevent failure of the vertical fin spar cap, which could cause the assembly to separate and subsequently cause loss of control of the helicopter.

DATES: Effective March 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 22, 1993.

Comments for inclusion in the Rules Docket must be received by April 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-39, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5168, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION: On December 11, 1985, the FAA issued AD 85-17-03R1, Amendment 39-5194 (51 FR 1489, January 14, 1986), to require inspection of the vertical fin spar cap assembly every 20 hours time in service, or after completion of five flight operation days. The requirements of this inspection were eliminated if vertical fin spar modifications were accomplished in accordance with Part II of Bell Helicopter Textron, Inc. (BHTI) Alert Service Bulletin (ASB) 412-85-20, Revision B, dated November 8, 1985; these modifications included a cold-bonding process. That action was prompted by reported cracks in the left-hand vertical fin spar cap assembly, part number (P/N) 212-030-121-005. That condition, if not corrected, could result in loss of the vertical fin and subsequent loss of control of the helicopter.

Since the issuance of that AD, there have been five reported failures of the appropriately modified vertical fin spar cap assemblies. These failures (cracks) resulted from corrosion at the interface of the cold-bonded steel doublers and the aluminum fin spar cap. To further address this condition, BHTI issued ASB 412-92-65, dated August 17, 1992, which cancelled ASB 412-85-20. ASB 412-92-65 provides for repetitive inspections of the spar cap assembly, P/N 212-030-447-001, that contains cold-bonded steel doublers installed by the operator. The ASB also provides for a terminating action, replacing the -001 spar cap assembly with P/N 212-030-447-101, using hot-bonded steel doublers on a new aluminum spar cap supplied by the manufacturer. After review of ASB 412-92-65 and the associated service failures, the FAA has determined that further AD action is necessary to mandate additional inspections and to provide for newly modified assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of this

same type design, this AD supersedes AD 85–17–03R1 to require a repetitive inspection for cracks, corrosion or doubler debonding in the spar cap assembly until replaced with a spar cap assembly, P/N 212–030–447–101. The actions are required to be accomplished in accordance with ASB 412–92–65, that was previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–39." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5194 (51 FR 1489, January 14, 1986), and by adding a new airworthiness directive (AD), Amendment 39–8489, to read as follows:

AD 93–02–07 Bell Helicopter Textron, Inc., (BHTI) Amendment 39–8489. Docket Number 92–ASW–39. Supersedes AD 85–17–03R1, Amendment 39–5194, Docket Number 85–ASW–37.

Applicability: BHTI Model 412 helicopters, serial numbers 33001 through 33120 and serial numbers 34001 through 34012, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical fin spar cap assembly, which could result in loss of the vertical fin and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time in service after the effective date of this AD, inspect the vertical fin spar cap assembly, P/N 212–030–447–001, in accordance with the Accomplishment Instructions, Part I, of BHTI Alert Service Bulletin (ASB) No. 412–92–65, dated August 17, 1992, and every 25 hours time in service thereafter until it is replaced with a vertical fin spar cap assembly, P/N 212–030–447–101, in accordance with the Accomplishment Instructions, Part II, of the ASB. If any cracks, corrosion or doubler debonding is found, replace the spar cap assembly before further flight with an airworthy part in accordance with the Accomplishment Instructions, Part II, of the ASB.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, 4400 Blue Mound Road, Fort Worth, Texas 76106. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement of the fin spar cap shall be done in accordance with the Accomplishment Instructions, Parts I and II, of BHTI ASB No. 412–92–65, dated August 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101–0482. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 22, 1993.

Issued in Fort Worth, Texas, on January 27, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–4470 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92-NM-203-AD; Amendment 39-8502; AD 93-04-01]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires modification of the flight compartment overhead circuit breaker panel. This amendment is prompted by an operator's report that the number 1 and number 3 display units in the cockpit went blank momentarily on several occasions. The actions specified by this AD are intended to prevent display units from going blank, which could lead to loss of display information that is critical for continued safe flight.

DATES: Effective April 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brett E. Portwood, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-132L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5347; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on November 20, 1992 (57 FR 54730). That action proposed to require modification of the flight compartment overhead circuit breaker panel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 61 McDonnell Douglas Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,815, or $83 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-04-01 McDonnell Douglas: Amendment 39-8502. Docket 92-NM-203-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent display units from going blank, which could lead to momentary loss of flight critical display information, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the flight compartment overhead circuit panel in accordance with McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or

at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 2, 1993.

Issued in Renton, Washington, on February 19, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4471 Filed 2–25–93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N–93–3550; FR–3346–N–02]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors; Clarification

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of clarification for use of Annual Adjustment Factors.

SUMMARY: This notice clarifies the Department's instructions for using the Section 8 Annual Adjustment Factors (AAFs) that were published in the **Federal Register** on January 13, 1993 (58 FR 4272.)

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research, room 8224, 451 Seventh Street SW., Washington, DC 20410; (202) 708–0577; TDD (202) 708–0770. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On January 13, 1993 (58 FR 4272), the Department published Annual Adjustment Factors (AAFs) in accordance with 24 CFR 888.202. In general, AAFs are used to adjust the Contract Rents for certain Section 8 program units. The specific application of the AAFs is determined by reference to Housing Assistance Payments contracts and to the appropriate program regulations or requirements.

The AAFs published on January 13 included: Separate AAF schedules for the 73 metropolitan areas with local Consumer Price Index (CPI) surveys; and AAFs for the metropolitan parts (exclusive of the 73 areas with CPI surveys) and the nonmetropolitan parts of the 10 HUD Regions. The January 13 publication also provided tables listing the States in each HUD region and the definitions of the 73 metropolitan areas by their corresponding counties or towns.

The Department has received numerous inquiries concerning which set of the 10 HUD Regional AAFs (metropolitan or nonmetropolitan) are to be used for areas that are not among the 73 CPI areas, and whether the AAF areas are affected by the new metropolitan area definitions released by the Office of Management and Budget (OMB) on December 28, 1992 (OMB Bulletin No. 93–05).

This Notice supplements the January 13 publication of AAFs by providing a listing (alphabetized by state and within states) of metropolitan areas (exclusive of the 73 CPI metropolitan areas) and of nonmetropolitan areas. To determine the appropriate AAF schedule, users should first check to see if the unit is located in one of the 73 CPI areas listed in the January 13 publication. If that is not the case, they should refer to the appropriate state in the list included in this publication and check the metropolitan or nonmetropolitan area listing. The HUD Region Metropolitan or the Nonmetropolitan AAF schedule is to be used, depending on whether the unit is located within a PMSA or MSA or within a nonmetropolitan county.

The list of metropolitan areas in HUD Region I are defined in terms of towns within counties because metropolitan areas in the New England states are not coextensive with whole counties. Puerto Rico and the Virgin Islands use the HUD Region IV AAFs. All areas of Hawaii use the AAF schedule for Hawaii, which is based on the CPI survey for the Honolulu metropolitan area; the Pacific Islands use the HUD Region IX nonmetropolitan AAFs. The Anchorage metropolitan area has its own AAFs based on a local CPI survey; all other areas in Alaska use the HUD Region X nonmetropolitan area AAFs.

Because the AAFs are intended to be used from the November 8 anniversary date, and the survey data for the HUD Regions were collected prior to OMB's change in the metropolitan area definitions, the Department will continue using the definitions that were in effect prior to the December 31, 1992 effective date established by the OMB Bulletin. The new metropolitan area definitions are now being evaluated to determine how they will be used in next year's publication of AAFs.

Dated: February 19, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)

	Counties
Alabama	
PMSA/MSA Metropolitan Areas:	
MSA: Anniston, AL	Calhoun.
MSA: Birmingham, AL	Blount, Jefferson, St Clair, Shelby, Walker.
MSA: Columbus, GA–AL	Russell.
MSA: Decatur, AL	Morgan, Lawrence.
MSA: Dothan, AL	Dale, Houston.
MSA: Florence, AL	Colbert, Lauderdale.
MSA: Gadsden, AL	Etowah.
MSA: Huntsville, AL	Madison.
MSA: Mobile, AL	Baldwin, Mobile.
MSA: Montgomery, AL	Autauga, Elmore, Montgomery.
MSA: Tuscaloosa, AL	Tuscaloosa.
Nonmetropolitan Areas	Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Limestone, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Washington, Wilcox, Winston.
Arizona	
PMSA/MSA Metropolitan Areas:	
MSA: Phoenix, AZ	Maricopa.
MSA: Tucson, AZ	Pima.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Yuma, AZ	Yuma.
Nonmetropolitan Areas	Apache, Cochise, Coconino, Gila, Graham, Greenlee, Lapaz, Mohave, Navajo, Pinal, Santa Cruz, Yavapai.
Arkansas	
PMSA/MSA Metropolitan Areas:	
MSA: Fayetteville-Springdale, AR	Washington.
MSA: Fort Smith, AR–OK	Crawford, Sebastian.
MSA: Little Rock-North Little Rock, AR	Faulkner, Lonoke, Pulaski, Saline.
MSA: Memphis, TN–AR–MS	Crittenden.
MSA: Pine Bluff, AR	Jefferson.
MSA: Texarkana, TX-Texarkana, AR	Miller.
Nonmetropolitan Areas	Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, St Francis, Scott, Searcy, Sevier, Sharp, Stone, Union, Van Buren, White, Woodruff, Yell.
California	
PMSA/MSA Metropolitan Areas:	
MSA: Bakersfield, CA	Kern.
MSA: Chico, CA	Butte.
MSA: Fresno, CA	Fresno.
MSA: Merced, CA	Merced.
MSA: Modesto, CA	Stanislaus.
MSA: Redding, CA	Shasta.
MSA: Sacramento, CA	El Dorado, Placer, Sacramento, Yolo.
MSA: Salinas-Seaside-Monterey, CA	Monterey.
MSA: Santa Barbara-Santa Maria-Lompoc, CA	Santa Barbara.
MSA: Stockton, CA	San Joaquin.
MSA: Visalia-Tulare-Portervilie, CA	Tulare.
MSA: Yuba City, CA	Sutter, YUBA.
Nonmetropolitan Areas	Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, San Luis Obispo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne.
Colorado	
PMSA/MSA Metropolitan Areas:	
MSA: Colorado Springs, CO	El Paso.
MSA: Fort Collins-Loveland, CO	Larimer.
MSA: Greeley, CO	Weld.
MSA: Pueblo, CO	Pueblo.
Nonmetropolitan Areas	Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Delores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma.
Connecticut	
PMSA/MSA Metropolitan Areas:	*Towns*
PMSA: Briston, CT:	
County:	
Hartford	Briston, Burlington.
Litchfield	Plymouth.
PMSA: Hartford, CT:	
County:	
Hartford	Avon, Bloomfield, Canton, East Granby, East Hartfor, East Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, South Windso, Suffield, West Hartfor, Wethersfield, Windsor, Windsor Lock.
Litchfield	Barkhamsted, New Hartford.
Middlesex	East Haddam.
New London	Colchester.
Tolland	Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Somers, Stafford, Tolland, Vernon, Willington.
PMSA: Middletown, CT: County: Middlesex	Cromwell, Durham, East Hampton, Haddam, Middlefield, Middletown, Portland.
PMSA: New Britain, CT: County: Hartford	Berlin, New Britain, Plainville, Southington.
MSA: New Haven-Meriden, CT:.	
County:	
Middlesex	Clinton, Killingworth.
New Haven	Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branfo, North Haven, Orange, Wallingford, West Haven, Woodbridge.
MSA: New London-Norwich, CT–RI:	
County:	
New London	Bozrah, East Lyme, Franklin, Griswold, Groton, Ledyard, Lisbon, Montville, New London, North Stonin, Norwich, Old Lyme, Preston, Salem, Sprague, Stonington, Waterford.
Windham	Canterbury.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Waterbury, CT:	
County:	
Litchfield	Bethlehem, Thomaston, Watertown, Woodbury.
New Haven	Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott.
Nonmetropolitan Areas:	
County:	
Hartford	Hartland
Litchfield	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester.
Middlesex	Chester, Deep River, Essex, Old Saybrook, Westbrook.
New London	Lebanon, Lyme, Voluntown.
Tolland	Mansfield, Union.
Windham	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling, Thompson, Windham, Woodstock.
Delaware	
	Counties
PMSA/MSA Metropolitan Areas:	
Nonmetropolitan Areas	Kent, Sussex.
Florida	
PMSA/MSA Metropolitan Areas:	
MSA: Bradenton, FL	Manatee.
MSA: Daytona Beach, FL	Volusia.
MSA: Fort Myers-Cape Coral, FL	Lee.
MSA: Fort Pierce, FL	Martin, St. Lucie.
MSA: Fort Walton Beach, FL	Okaloosa.
MSA: Gainesville, FL	Alachua, Bradford.
MSA: Jacksonville, FL	Clay, Duval, Nassau, St Johns
MSA: Lakeland-Winter Haven, FL	Polk.
MSA: Melbourne-Titusville-Palm Bay, FL	Brevard.
MSA: Naples, FL	Collier.
MSA: Ocala, FL	Marion.
MSA: Orlando, FL	Orange, Osceola, Seminole.
MSA: Panama City, FL	Bay.
MSA: Pensacola, FL	Escambia, Santa Rosa.
MSA: Sarasota, FL	Sarasota.
MSA: Tallahassee, FL	Gadeden, Leon.
MSA: Tampa-St. Petersburg-Clearwater, FL	Hernando, Hillsborough, Pasco, Pinellas.
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	Palm Beach.
Nonmetropolitan Areas	Baker, Calhoun, Charlotte, Citrus, Columbia, De Soto, Dixie, Flagler, Franklin, Gilchrist, Glades Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette. Lake, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington.
Georgia	
PMSA/MSA Metropolitan Areas:	
MSA: Albany, GA	Dougherty, Lee.
MSA: Athens, GA	Clarke, Jackson, Madison, Oconee.
MSA: Augusta, GA–SC	Columbia, McDuffie, Richmond.
MSA: Chattanooga, TN–GA	Catoosa, Dade, Walker.
MSA: Columbus, GA–AL	Chattahoochee, Muscogee.
MSA: Macon-Warner Robins, GA	Bibb, Houston, Jones, Peach.
MSA: Savannah, GA	Chatham, Effingham.
Nonmetropolitan Areas	Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barton, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Calhoun, Camden, Candler, Carroll, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Irwin, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, McIntosh, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.
Idaho	
PMSA/MSA Metropolitan Areas:	
MSA: Boise City, ID	Ada.
Nonmetroplitan areas	Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Mindoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington.
Illinois	
PMSA/MSA Metropolitan Areas:	
MSA: Bloomington-Normal, IL	McLean.
MSA: Champaign-Urbana-Rantoul, IL	Champaign.
MSA: Davenport-Rock Island-Moline, IA–IL	Henry, Rock Island.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Decatur, IL	Macon.
MSA: Kankakee IL	Kankakee.
MSA: Peoria, IL	Peoria, Tazewell, Woodford.
MSA: Rockford, IL	Boone, Winnebago.
MSA: Springfield, IL	Menard, Sangamon.
Nonmetropolitan Areas	Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Kalb, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, McDonough, Macoupin, Marion, Marshall, Mason, Massac, Mercer, Montgomery, Morgan, Moultrie, Ogle, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson.
Indiana	
PMSA/MSA Metropolitan Areas:	
MSA: Anderson, IN	Madison.
MSA: Bloomington, IN	Monroe.
MSA: Elkhart-Goshen, IN	Elkhart.
MSA: Evansville, IN–KY	Posey, Vanderburgh, Warrick.
MSA: Fort Wayne, IN	Allen, De Kalb, Whitley.
MSA: Indianapolis, IN	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby.
MSA: Kokomo, IN	Howard, Tipton.
MSA: Lafayette-West Lafayette, IN	Tippecanoe.
MSA: Louisville, KY–IN	Clark, Floyd, Harrison.
MSA: Muncie, IN	Delaware.
MSA: South Bend-Mishawaka, IN	St Joseph.
MSA: Terre Haute, IN	Clay, Vigo.
Nonmetropolitan Areas	Adams, Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Clinton, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, Lagrange, La Porte, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Scott, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Vermillion, Wabash, Warren, Washington, Wayne, Wells, White.
Iowa	
PMSA/MSA Metropolitan Areas:	
MSA: Cedar Rapids, IA	Linn.
MSA: Davenport-Rock Island-Moline, IA–IL	Scott.
MSA: Des Moines, IA	Dallas, Polk, Warren.
MSA: Dubuque, IA	Dubuque.
MSA: Iowa City, IA	Johnson.
MSA: Omaha, NE–IA	Pottawattamie.
MSA: Sioux City, IA–NE	Woodbury.
MSA: Waterloo-Cedar Falls, IA	Black Hawk, Bremer.
Nonmetropolitan Areas	Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright.
Kansas	
PMSA/MSA Metropolitan Areas:	
MSA: Lawrence, KS	Douglas.
MSA: Topeka, KS	Shawnee.
MSA: Wichita, KS	Butler, Sedgwick, Harvey.
Nonmetropolitan Areas	Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decature, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, McPherson, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson.
Kentucky	
PMSA/MSA Metropolitan Areas:	
MSA: Clarksville-Hopkinsville, TN–KY	Christian.
MSA: Evansville, IN–KY	Henderson.
MSA: Huntington-Ashland, WV–KY–OH	Boyd, Carter, Greenup.
MSA: Lexington-Fayette, KY	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford.
MSA: Louisville, KY–IN	Bullitt, Jefferson, Oldham, Shelby.
MSA: Owensboro, KY	Daviess.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Nonmetropolitan Areas	Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, McCracken, McCreary, McLean, Madison, Magoffin, Marion, Marshall, Martin, Mason, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe.
Louisiana	
	Parishes
PMSA/MSA Metropolitan Areas:	
MSA: Alexandria, LA	Rapides.
MSA: Baton Rouge, LA	Ascension, East Baton Rouge, Livingston, West Baton Rouge.
MSA: Houma-Thibodaux, LA	Lafourche, Terrebonne.
MSA: Lafayette, LA	Lafayette, St Martin.
MSA: Lake Charles, LA	Calcasieu.
MSA: Monroe, LA	Ouachita.
MSA: New Orleans, LA	Jefferson, Orleans, St Bernard, St Charles, St John The, St Tammany.
MSA: Shreveport, LA	Bossier, Caddo.
Nonmetropolitan Areas	Acadia, Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, E Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Plaquemines, Pointe Coupee, Red River, Richland, Sabine, St Helena, St James, St Landry, St Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, Webster, West Carroll, W Feliciana, Winn.
Maine	
	Towns
PMSA/MSA Metropolitan Areas:	
MSA: Bangor, ME:	
County:	
Penobscot	Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono, Orrington, Penobscot In, Veazie.
Waldo	Winterport.
MSA: Lewiston-Auburn, ME:	
County:	
Androscoggin	Auburn, Green, Lewiston, Lisbon, Mechanic Fal, Poland, Sabattus.
MSA: Portland, ME:	
County:	
Cumberland	Cape Elizabe, Cumberland, Falmouth, Freeport, Gorham, Gray, North Yarmou, Portland, Raymond, Scarborough, South Portla, Standish, Westbrook, Windham, Yarmouth.
York	Buxton, Hollis, Old Orchard.
MSA: Portsmouth-Dover-Rochester, NH–ME:	
County:	
York	Berwick, Eliot, Kittery, North Berwic, South Berwic, Wells, York.
Nonmetropolitan Areas:	
County:	
Androscoggin	Durham, Leeds, Livermore, Livermore Fa, Minot, Turner, Wales.
Aroostook.	
Cumberland	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison, Naples, New Gloucest, Pownal, Sebago.
Franklin.	
Hancock.	
Kennebec.	
Knox.	
Lincoln.	
Oxford.	
Penobscot	Alton, Argyle, Bradford, Bradley, Burlington, Carmel, Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew, East Millino, Edinburg, Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush, Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, North Penobs, Passadumkeag, Patten, Plymouth, Prentiss, Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly, Webster, Whitney, Winn, Woodville,
Piscataquis.	
Sagadahoc.	
Somerset.	
Waldo	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Spr, Swanville, Thorndike, Troy, Unity, Waldo.
Washington.	
York	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkpor, Lebanon, Limerick, Limington, Lyman, Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro.
Maryland	
	Counties
PMSA/MSA Metropolitan Areas:	
MSA: Cumberland, MD–WV	Allegany.
MSA: Hagerstown, MD	Washington.
MSA: Columbia, MD	Howard.
Nonmetropolitan Areas	Caroline, Dorchester, Garrett, Kent, St Mary's, Somerset, Talbot, Wicomico, Worcester.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

	Towns
Massachusetts	
PMSA/MSA Metropolitan Areas:	
PMSA: Fall River, MA–RI: County: Bristol	Fall River, Somerset, Swansea, Westport.
MSA: Fitchburg-Leominster, MA:	
County:	
Middlesex	Ashby.
Worcester	Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster.
MSA: New Bedford, MA:	
County:	
Bristol	Acushnet, Dartmouth, Fairhaven, Freetown, New Bedford.
Plymouth	Marion, Mattapoisett, Rochester.
PMSA: Pawtucket-Woonsocket-Attleboro, RI–MA:	
County:	
Bristol	Attleboro, North Attleb, Rehoboth, Seekonk.
Norfolk	Plainville.
Worcester	Blackstone, Millville.
MSA: Pittsfield, MA: County: Berkshire	Cheshire, Dalton, Hinsdale, Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge.
MSA: Springfield, MA:	
County:	
Hampden	Agawam, Chicopee, East Longmea, Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery, Palmer, Russell, Southwick, Springfield, Westfield, West Springf, Wilbraham.
Hampshire	Belchertown, Easthampton, Gramby, Huntington, Northampton, Southampton, South Hadley.
MSA: Worcester, MA: County: Worcester	Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfi, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookf, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster, Westborough, West Boylsto, Worcester.
Nonmetropolitan Areas:	
County:	
Barnstable	
Berkshire	Adams, Alford, Becket, Clarksburg, Egremont, Florida, Great Barrin, Hancock, Monterey, Mount Washin, New Ashford, New Marlboro, North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield, Tyringham, Washington, West Stockbr, Williamstown, Windsor.
Bristol	Berkley, Dighton, Taunton.
Dukes	
Franklin	
Hampden	Blandford, Brimfield, Chester, Granville, Holland, Tolland, Wales.
Hampshire	Amherst, Chesterfield, Cummington, Goshen, Hadley, Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton, Williamsburg, Worthington.
Nantucket	
Plymouth	Wareham.
Worcester	Athol, Gardner, Hardwick, Hubbardston, New Braintre, Oakham, Petersham, Phillipston, Royalston, Southbridge, Sturbridge, Templeton, Warren, West Brookfi, Winchendon.
Michigan	
PMSA/MSA Metropolitan Areas:	*Counties*
MSA: Battle Creek, MI	Calhoun.
MSA: Benton Harbor, MI	Berrien.
MSA: Flint, MI	Genesee.
MSA: Grand Rapids, MI	Kent, Ottawa.
MSA: Jackson, MI	Jackson.
MSA: Kalamazoo, MI	Kalamazoo.
MSA: Lansing-East Lansing, MI	Clinton, Eaton, Ingham.
MSA: Muskegon, MI	Muskegon.
MSA: Saginaw-Bay City-Midland, MI	Bay, Midland, Saginaw.
Nonmetropolitan Areas	Alcona, Alger, Allegan, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Lenawee, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, St Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Wexford.
Minnesota	
PMSA/MSA Metropolitan Areas:	
MSA: Duluth, MN–WI	St Louis.
MSA: Fargo-Moorhead, ND–MN	Clay.
MSA: Rochester, MN	Olmsted.
MSA: St. Cloud, MN	Benton, Sherburne, Stearns.
Nonmetropolitan Areas	Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Houston, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac Qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mcleod, Mahnomen, Marshall, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Polk, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine.
Mississippi	
PMSA/MSA Metropolitan Areas:	
MSA: Biloxi-Gulfpot, MS	Hancock, Harrison.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Jackson, MS	Hinds, Madison, Rankin.
MSA: Memphis, TN–AR–MS	De Soto.
MSA: Pascagoula, MS	Jackson.
Nonmetropolitan Areas	Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.
Missouri	
PMSA/MSA Metropolitan Areas:	
MSA: Columbia, MO	Boone.
MSA: Joplin, MO	Jasper, Newton.
MSA: St. Joseph, MO	Buchanan.
MSA: Springfield, MO	Christian, Greene.
Nonmetropolitan Areas	Adair, Andrew, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Charlton, Clark, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St Clair, STE. Genevieve, St Francois, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.
Montana	
PMSA/MSA Metropolitan Areas:	
MSA: Billings, MT	Yellowstone.
MSA: Great Falls, MT	Cascade.
Nonmetropolitan Areas	Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, YL–St–NT–PK.
Nebraska:	
PMSA/MSA Metropolitan Areas:	
MSA: Lincoln, NE	Lancaster.
MSA: Omaha, NE–IA	Douglas, Sarpy, Washington.
MSA: Sioux City, IA–NE	Dakota.
Nonmetropolitan Areas	Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York.
Nevada	
PMSA/MSA Metropolitan Areas:	
MSA: Las Vegas, NV	Clark.
MSA: Reno, NV	Washoe.
Nonmetropolitan Areas	Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, White Pine, Carson City.
New Hampshire	
PMSA/MSA Metropolitan Areas:	
MSA: Manchester, NH:	*Towns*
County:	
Hillsborough	Bedford, Goffstown, Manchester.
Merrimack	Allenstown, Hooksett.
Rockingham	Auburn, Candia.
MSA: Portsmouth-Dover-Rochester, NH–ME:	
County:	
Rockingham	Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampto, Portsmouth, Rye, Stratham.
Strafford	Barrington, Dover, Durham, Farmington, Lee, Madbury, Milton, Rochester, Rollinsford, Somersworth.
Nonmetropolitan Areas:	
County:	
Belknap.	
Carroll.	
Cheshire	

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Coos.	
Grafton.	
Hillsborough	Antrim, Bennington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Petersborough, Sharon, Temple, Weare, Windsor.
Merrimack	Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury, New London, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot.
Rockingham	Chester, Deerfield, Epping, Fremont, Hampton Fall, Kensington, Northwood, Nottingham, Raymond, South Hampto.
Strafford	Middleton, New Durham, Strafford.
Sullivan.	
New Jersey	
	Counties
PMSA/MSA Metropolitan Areas:	
MSA: Allentown-Bethlehem, PA–NJ	Warren
MSA: Atlantic City, NJ	Atlantic, Cape May
New Mexico	
PMSA/MSA Metropolitan Areas:	
MSA: Albuquerque, NM	Bernalillo
MSA: Las Cruces, NM	Dona Ana
MSA: Sante Fe, NM	Los Alamos, Sante Fe
Nonmetropolitan Areas	Catron, Chaves, Cibola, Colfax, Curry, De Baca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union, Valencia.
New York	
PMSA/MSA Metropolitan Areas:	
MSA: Albany-Schenectady-Troy, NY	Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady.
MSA: Binghamton, NY	Broome, Tioga.
MSA: Elmira, NY	Chemung.
MSA: Glens Falls, NY	Warren, Washington.
MSA: Jamestown-Dunkirk, NY	Chautauqua.
MSA: Poughkeepsie, NY	Dutchess.
MSA: Rochester, NY	Livingston, Monroe, Ontario, Orleans, Wayne.
MSA: Syracuse, NY	Madison, Onondaga, Oswego.
MSA: Utica-Rome, NY	Herkimer, Oneida.
Nonmetropolitan Areas	Allegany, Cattaraugus, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Hamilton, Jefferson, Lewis, Otsego, St Lawrence, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates.
North Carolina	
PMSA/MSA Metropolitan Areas:	
MSA: Asheville, NC	Buncombe.
MSA: Burlington, NC	Alamance.
MSA: Charlotte-Gastonia-Rock Hill, NC–SC	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union.
MSA: Fayetteville, NC	Cumberland.
MSA: Greensboro—Winston-Salem—High Point, NC	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin.
MSA: Hickory, NC	Alexander, Burke, Catawba.
MSA: Jacksonville, NC	Onslow.
MSA: Raleigh-Durham, NC	Durham, Franklin, Orange, Wake.
MSA: Wilmington, NC	New Hanover.
Nonmetropolitan Areas	Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Caldwell, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yancey.
North Dakota	
PMSA/MSA Metropolitan Areas:	
MSA: Bismarck, ND	Burleigh, Morton.
MSA: Fargo-Moorehead, ND–MN	Cass.
MSA: Grand Forks, ND	Grand Forks.
Nonmetropolitan Areas	Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ramson, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams.
Ohio	
PMSA/MSA Metropolitan Areas	
MSA: Canton, OH	Carroll, Stark.
MSA: Columbus, OH	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway, Union.
MSA: Dayton-Springfield, OH	Clark, Greene, Miami, Montgomery.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Huntington-Ashland, WV–KY–OH	Lawrence.
MSA: Lima, OH	Allen, Auglaize.
MSA: Mansfield, OH	Richland.
MSA: Parkersburg-Marietta, WV–OH	Washington.
MSA: Steubenville-Weirton, OH–WV	Jefferson.
MSA: Toledo, OH	Fulton, Lucas, Wood.
MSA: Wheeling, WV–OH	Belmont.
MSA: Youngstown-Warren, OH	Mahoning, Trumbull.
Nonmetropolitan Areas	Adams, Ashland, Ashtabula, Athens, Brown, Champaign, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Van Wert, Vinton, Wayne, Williams, Wyandot.
Oklahoma	
PMSA/MSA Metropolitan Areas:	
MSA: Enid, OK	Garfield.
MSA: Fort Smith, AR–OK	Sequoyah.
MSA: Lawton, OK	Comanche.
MSA: Oklahoma City, OK	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie.
MSA: Tulsa, OK	Creek, Osage, Rogers, Tulsa, Wagoner.
Nonmetropolitan Areas	Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward.
Oregon	
PMSA/MSA Metropolitan Areas:	
MSA: Eugene-Springfield, OR	Lane.
MSA: Medford, OR	Jackson.
MSA: Salem, OR	Marion, Polk.
Nonmetropolitan Areas	Baker, Benton, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler.
Pennsylvania	
PMSA/MSA Metropolitan Areas:	
MSA: Allentown-Bethlehem, PA–NJ	Carbon, Lehigh, Northampton.
MSA: Altoona, PA	Blair.
MSA: Erie, PA	Erie.
MSA: Harrisburg-Lebanon-Carlisle, PA	Cumberland, Dauphin, Lebanon, Perry.
MSA: Johnstown, PA	Cambria, Somerset.
MSA: Lancaster, PA	Lancaster.
MSA: Reading, PA	Berks.
MSA: Scranton—Wilkes-Barre, PA	Columbia, Lackawanna, Luzerne, Monroe, Wyoming.
MSA: Sharon, PA	Mercer.
MSA: State College, PA	Centre.
MSA: Williamsport, PA	Lycoming.
MSA: York, PA	Adams, York.
Nonmetropolitan Areas	Armstrong, Bedford, Bradford, Butler, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, McKean, Mifflin, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne.
Rhode Island	
PMSA/MSA Metropolitan Areas:	*Towns*
PMSA: Fall River, MA–RI: County: Newport	Little Compt, Tiverton.
MSA: New London-Norwich, CT–RI: County: Washington	Hopkinton, Westerly.
PMSA: Pawtucket-Woonsocket-Attleboro, RI–MA: County: Providence.	Burrillville, Central Fall, Cumberland, Lincoln, North Smithf, Pawtucket, Smithfield, Woonsocket.
PMSA: Providence, RI:	
County:	
Bristol	Barrington, Bristol, Warren.
Kent	Coventry, East Greenwi, Warwick, West Warwick.
Newport	Jamestown.
Providence	Cranston, East Provide, Foster, Glocester, Johnston, North Provid, Providence, Scituate.
Washington	Exeter, Narragansett, North Kingst, Richmond, South Kingst.
Nonmetropolitan Areas:	
Kent	West Greenwi.
Newport	Middletown, Newport, Portsmouth.
Washington	Charlestown, New Shoreham.
South Carolina	
PMSA/MSA Metropolitan Areas:	*Counties*
MSA: Anderson, SC	Anderson.
MSA: Augusta, GA–SC	Aiken.
MSA: Charleston, SC	Berkeley, Charleston, Dorchester.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Charlotte-Castonia-Rock Hill, NC–SC	York.
MSA: Columbia, SC	Lexington, Richland.
MSA: Florence, SC	Florence.
MSA: Greenville-Spartanburg, SC	Greenville, Pickens, Spartanburg.
Nonmetropolitan Areas	Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Edgefield, Fairfield, Georgetown, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, McCormick, Marion, Marlboro, Newberry, Oconee, Orangeburg, Saluda, Sumter, Union, Williamsburg.
South Dakota	
PMSA/MSA Metropolitan Areas:	
MSA: Rapid City, SD	Pennington.
MSA: Sioux Falls, SD	Minnehaha.
Nonmetropolitan Areas	Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach.
Tennessee	
PMSA/MSA Metropolitan Areas:	
MSA: Chattanooga, TN–GA	Hamilton, Marion, Sequatchie.
MSA: Clarksville-Hopkinsville, TN–KY	Montgomery.
MSA: Jackson, TN	Madison.
MSA: Johnson City-Kingsport-Bristol, TN–VA	Carter, Hawkins, Sullivan, Unicoi, Washington.
MSA: Knoxville, TN	Anderson, Blount, Grainger, Jefferson, Knox, Sevier, Union.
MSA: Memphis, TN–AR–MS	Shelby, Tipton.
MSA: Nashville, TN	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson.
Nonmetropolitan Areas	Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Decatur, De Kalb, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McMinn, McNairy, Macon, Marshall, Maury, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White.
Texas	
PMSA/MSA Metropolitan Areas:	
MSA: Abilene, TX	Taylor.
MSA: Amarillo, TX	Potter, Randall.
MSA: Austin, TX	Hays, Travis, Williamson.
MSA: Beaumont-Port Arthur, TX	Hardin, Jefferson, Orange.
MSA: Brownsville-Harlingen, TX	Cameron.
MSA: Bryan-College Station, TX	Brazos.
MSA: Corpus Christi, TX	Nueces, San Patricio.
MSA: El Paso, TX	El Paso.
MSA: Killeen-Temple, TX	Bell, Coryell.
MSA: Laredo, TX	Webb.
MSA: Longview-Marshall, TX	Gregg, Harrison.
MSA: Lubbock, TX	Lubbock.
MSA: Mc Allen-Edinburg-Mission, TX	Hidalgo
MSA: Midland, TX	Midland.
MSA: Odessa, TX	Ector.
MSA: San Angelo, TX	Tom Green.
MSA: San Antonio, TX	Bexar, Comal, Guadalupe.
MSA: Sherman-Denison, TX	Grayson.
MSA: Texarkana, TX-Texarkana, AR	Bowie.
MSA: Tyler, TX	Smith.
MSA: Victoria, TX	Victoria.
MSA: Waco, TX	McLennan.
MSA: Wichita Falls, TX	Wichita.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

Nonmetropolitan Areas	Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, De Witt, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, LLano, Loving, Lynn, McCulloch, McMullen, Madison, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala.
Utah	
PMSA/MSA Metropolitan Areas:	
MSA: Provo-Orem, UT	Utah.
MSA: Salt Lake City-Ogden, UT	Davis, Salt Lake, Weber.
Nonmetropolitan Areas	Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah Wasatch, Washington, Wayne.
Vermont	
PMSA/MSA Metropolitan Areas:	*Towns*
MSA: Burlington, VT:	
County:	
Chittenden	Burlington, Charlotte, Colchester, Essex, Hinesburg, Jericho, Milton, Richmond, St George, Shelburne, South Burlin, Williston, Winooski.
Franklin	Georgia.
Grand Isle	Grande Isle, South Hero.
Nonmetropolitan Areas:	
County:	
Addison.	
Bennington.	
Caledonia.	
Chittenden	Bolton, Buels, Huntington, Underhill, Westford.
Essex.	
Franklin	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery, Richford, St. Albans, St. Albans, Sheldon, Swanton.
Grand Isle	Alburg, Isle La Mott, North Hero.
Lamoille.	
Orange.	
Orleans.	
Rutland.	
Washington.	
Windham.	
Windsor.	
Virginia	
PMSA/MSA Metropolitan Areas:	*Counties*
MSA: Charlottesville, VA	Albemarle, Fluvanna, Greene, Charlottesville.
MSA: Danville, VA	Pittsylvania, Danville.
MSA: Johnson City-Kingsport-Bristol, TN–VA	Scott, Washington, Bristol.
MSA: Lynchburg, VA	Amherst, Campbell, Lynchburg.
MSA: Norfolk-Virginia Beach-Newport News, VA	Gloucester, James City, York, Chesapeake, Hampton, Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg City.
MSA: Richmond-Petersburg, VA	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights, Hopewell, Petersburg, Richmond.
MSA: Roanoke, VA	Botetourt, Roanoke, Roanoke, Salem.
Nonmetropolitan Areas	Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bedford, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Essex, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, Isle of Wight, King and Queen, King George, King William, Lancaster, Lee, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, Southampton, Spotsylvania, Surry, Sussex, Tazewell, Warren, Westmoreland, Wise, Wythe, Bedford, Buena Vista, Clifton Forge City, Covington, Emporia, Franklin, Fredericksburg, Galax, Harrisonburg City, Lexington, Martinsville City, Norton, Radford, South Boston City, Staunton, Waynesboro, Winchester.
Washington	
PMSA/MSA Metropolitan Areas:	
MSA: Bellingham, WA	Whatcom.

SCHEDULE C.—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS: AREA DEFINITIONS (EXCLUDING CPI AREAS)—Continued

MSA: Bremerton, WA	Kitsap.
MSA: Olympia, WA	Thurston.
MSA: Richland-Kennewick-Pasco, WA	Benton, Franklin.
MSA: Spokane, WA	Spokane.
MSA: Yakima, WA	Yakima.
Nonmetropolitan Areas	Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Island, Jefferson Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman.
West Virginia	
PMSA/MSA Metropolitan Areas:	
MSA: Charleston, WV	Kanawha, Putnam.
MSA: Cumberland, MD–WV	Mineral.
MSA: Huntington-Ashland, WV–KY–OH	Cabell, Wayne.
MSA: Parkersburg-Marietta, WV–OH	Wood.
MSA: Steubenville-Weirton, OH–WV	Brooke, Hancock.
MSA: Wheeling, WV–OH	Marshall, Ohio.
Nonmetropolitan Areas	Barbour, Berkeley, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Lewis, Lincoln, Logan, McDowell, Marion, Mason, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming.
Wisconsin	
PMSA/MSA Metropolitan Areas:	
MSA: Appleton-Oshkosh-Neenah, WI	Calumet, Outagamie, Winnebago.
MSA: Duluth, MN–WI	Douglas.
MSA: Eau Claire, WI	Chippewa, Eau Claire.
MSA: Green Bay, WI	Brown.
MSA: Janesville-Beloit, WI	Rock.
MSA: La Crosse, WI.	La Crosse.
MSA: Madison, WI	Dane.
MSA: Sheboygan, WI	Sheboygan.
MSA: Wausau, WI	Marathon.
Nonmetropolitan Areas	Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood.
Wyoming	
PMSA/MSA Metropolitan Areas:	
MSA: Casper, WY	Natrona.
MSA: Cheyenne, WY	Laramie.
Nonmetropolitan Areas	Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

[FR Doc. 93–4467 Filed 2–25–93; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8477]

RIN 1545–AO01

Casualty and theft losses and loss reimbursements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the limitations on passive activity losses and credits under section 469. The final regulations affect taxpayers subject to these limitations. They provide guidance by specifying certain casualty and theft losses and loss reimbursements to which the limitations do not apply.

EFFECTIVE DATE: The final regulations are effective for tax years ending after May 10, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document finalizes § 1.469–2T(c)(7)(vi) and (d)(2)(xi). See T.D. 8290, 55 FR 6980 (February 28, 1990).

No written comments and no requests for a public hearing were received in response to the cross reference notice of proposed rulemaking, PS–065–89, 55 FR 7006 (February 28, 1990).

Explanation of Provisions

The preamble to the temporary regulations explains the final regulations. Notice 90–21, 1990–1 C.B. 332, provides further guidance.

This document amends the temporary regulations to provide cross references to the final regulations.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Further, section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules. Therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the temporary regulations and the cross-reference notice of proposed rulemaking were submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Martin Schaffer of the Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Internal Revenue Service and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR 1.461–1 through 1.469–11

Accounting, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. In § 1.469–0, the entries for designated sections 1.469–2(c)(6)(iv) Example 3 through (d)(2)(xii) are revised to read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–2 Passive activity loss.

* * * * *

(c)(6)(iv) Example 3 through (c)(7)(iii) [Reserved].

(c)(7)(iv) through (vi) (no paragraph headings).

(d)(1) through (d)(2)(viii) [Reserved].

(d)(2)(ix) through (d)(2)(xii) (no paragraph headings).

* * * * *

Par. 3. Section 1.469–2 is amended as follows:

1. The paragraph designation "(c)(6)(iv) *Example 3* through (c)(7)(vi) [Reserved]" is revised.

2. New paragraphs (c)(7) (iv) through (vi) are added.

3. Paragraph (d)(2)(ix) is revised.

4. New paragraphs (d)(2)(x) and (xi) are added.

5. The revised and added provisions read as follows:

§ 1.469–2 Passive activity loss.

* * * * *

(c) * * *

(c)(6)(iv) *Example 3* through (c)(7)(iii) [Reserved]

(c)(7)(iv) Gross income of an individual from a covenant by such individual not to compete;

(v) Gross income that is treated as not from a passive activity under any provision of the regulations under section 469, including but not limited to § 1.469–1T(h)(6) (relating to income from intercompany transactions of members of an affiliated group of corporations filing a consolidated return) and § 1.469–2T(f) and paragraph (f) of this section (relating to recharacterized passive income);

(vi) Gross income attributable to the reimbursement of a loss from fire, storm, shipwreck, or other casualty, or from theft (as such terms are used in section 165(c)(3)) if—

(A) The reimbursement is included in gross income under § 1.165–1(d)(2)(iii) (relating to reimbursements of losses that the taxpayer deducted in a prior taxable year); and

(B) The deduction for the loss was not a passive activity deduction; and

* * * * *

(d) * * *

(2) * * *

(ix) An item of loss or deduction that is carried to the taxable year under section 172(a), section 613A(d), section 1212(a)(1) (in the case of corporations), or section 1212(b) (in the case of taxpayers other than corporations);

(x) An item of loss or deduction that would have been allowed for a taxable year beginning before January 1, 1987, but for section 704(d), 1366, or 465;

(xi) A deduction for a loss from fire, storm, shipwreck, or other casualty, or from theft (as such terms are used in section 167(c)(3)) if losses that are similar in cause and severity do not recur regularly in the conduct of the activity; and

* * * * *

Par. 4. Section 1.469–2T is amended as follows:

1. Paragraphs (c)(7) (iv) through (vi) are revised.

2. Paragraphs (d)(2) (x) and (xi) are revised.

3. New paragraph (d)(2)(xii) is added.

4. The revised and added provisions read as follows:

§ 1.469–2T Passive activity loss.

* * * * *

(c) * * *

(7) * * *

(iv) [Reserved] See § 1.469–2(c)(7)(iv) for rules relating to this paragraph (c)(7)(iv).

(v) [Reserved] See § 1.469–2(c)(7)(v) for rules relating to this paragraph (c)(7)(v).

(vi) [Reserved] See § 1.469–2(c)(7)(vi) for rules relating to this paragraph (c)(7)(vi).

* * * * *

(d) * * *

(2) * * *

(x) [Reserved] See § 1.469–2(d)(2)(x) for rules relating to this paragraph (d)(2)(x).

(xi) [Reserved] See § 1.469–2(d)(2)(xi) for rules relating to this paragraph (d)(2)(xi).

(xii) [Reserved] See § 1.469–2(d)(2)(xii) for rules relating to this paragraph (d)(2)(xii).

* * * * *

Michael P. Dolan,

Commissioner of Internal Revenue.

Approved: February 16, 1993.

James Fields,

(Acting) Assistant Secretary of the Treasury.

[FR Doc. 93–4423 Filed 2–22–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 206

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error made in the final regulations published in the **Federal Register** on December 18, 1992 (57 FR 60406) concerning the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP), by removing 34 CFR part 81 (General Education Provisions Act—Enforcement) as applicable regulations. Section 81.2 excludes all programs authorized by the Higher Education Act of 1965, as amended, including HEP and CAMP.

EFFECTIVE DATE: This correction is effective February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lorraine Wise, Office of Migrant Education, Department of Education, 400 Maryland Avenue, SW., room 2149, Washington, DC 20202. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call (202) 401–1985 for TDD services.

Dated: February 17, 1993.

Mary Jean LeTendre,

Acting Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.141 Migrant Education-High

School Equivalency Program; and 84.149 Migrant Education-College Assistance Migrant Program)

The following correction is made in FR Doc. 92–30588, 57 FR 60406 in the issue of December 18, 1992:

§ 206.4 [Corrected]

On page 60407, column 2, remove § 206.4(a)(5), and renumber (a)(6) to (8) as (a)(5) to (7), respectively.

[FR Doc. 93–4324 Filed 2–25–93; 8:45 am]
BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4561–3]

Georgia; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia has adopted by reference and is seeking authority to regulate certain revisions promulgated between July 1, 1990, and June 30, 1991, otherwise known as RCRA Cluster I. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revision is available for public review and comment.

DATES: Final authorization for Georgia's program revision shall be effective April 27, 1993, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business, March 29, 1993.

ADDRESSES: Copies of Georgia's program revision application are available during normal business hours at the following addresses for inspection and copying: Georgia Department of Natural Resources, Waste Management Branch, 205 Butler Street, SE., Floyd Towers East, Atlanta, Georgia 30334, 404–656–2833. U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; 404–347–4216. Written comments should be sent to Leonard W. Nowak at the address listed below.

FOR FURTHER INFORMATION CONTACT: Leonard W. Nowak, Acting Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404–347–2234).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, and 270.

B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984, and the latest Immediate Final Rule for authorizing revisions to its program was published at (57 FR 55465) on November 25, 1992. Today Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until March 29, 1993. Copies of Georgia's application for these program revisions are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of Georgia's program revisions shall become effective April 27, 1993, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following federal requirements promulgated between July 1, 1990 and June 30, 1991, for RCRA Cluster I.

Provision	FR reference	Federal promulgation date	State authority
CL 80. Toxicity Characteristic: Hydrocarbon Recovery Operation	55 FR 40834; 56 FR 13406	10/5/90; 4/2/91	391–3–11–.07(1)
CL 84. Toxicity Characteristic: Chlorofluorocarbon Refrigerants .	56 FR 5910	2/13/91	391–3–11–.07(1)
CL 86. Removal of Strontium Sulfide from List of Hazardous Waste, Technical Amendment.	56 FR 7567	2/25/91	391–3–11–.07(1)

Provision	FR reference	Federal promulgation date	State authority
CL 87. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	56 FR 19290	4/26/91	391-3-11-.10(1) & (2); 391-3-11-.11(3)(g)
CL 88. Hazardous Waste Management Systems Identification and Listing of Hazardous Waste Administrative Stay to Portions of Haz. Waste Listing K069.	55 FR 19951	5/7/91	391-3-11-.07(1)

Georgia is not authorized to operate the federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials, Transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This Notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 18, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93-4463 Filed 2-25-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their fooodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973,

42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona:					
Maricopa	City of Phoenix (Docket No. 7054).	Oct. 22, 1992, Oct. 29, 1992, The Arizona Republic.	The Honorable Paul Johnson, Mayor, City of Phoenix, 251 West Washington Street, Phoenix, Arizona 85003.	Oct. 1, 1992	040051
California:					
Monterey	City of Salinas (Docket No. 7043).	Mar. 5, 1992, Mar. 12, 1992, Salinas Californian.	The Honorable Alan Styles, Mayor, City of Salinas, 200 Lincoln Avenue, Salinas, California 93901.	Feb. 21, 1992 .	060202
Riverside	City of Riverside (Docket No. 7054).	Oct. 30, 1992, Nov. 6, 1992, The Press Enterprise.	The Honorable Terry Frizzel, Mayor, City of Riverside, 3900 Main Street, Riverside California 92522.	Oct. 1, 1992	060260
Sacramento	Unincorporated areas (Docket No. 7054).	Oct. 22, 1992, Oct. 29, 1992, Sacramento Bee.	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 301, Sacramento, California 95814.	Oct. 1, 1992	060262
Georgia:					
Chatham (FEMA Docket No. 7049).	Unincorporated areas	July 24, 1992, July 31, 1992, Savannah Morning News.	Mr. Robert L. McCorkle, Chairman of the Board of Chatham County Commissioners, P.O. Box 8161, Savannah, Georgia 31412.	July 17, 1992 ..	130030 C
Idaho:					
Bingham	Unincorporated areas (Docket No. 7052).	July 2, 1992, July 9, 1992, The Morning News.	The Honorable Dale Arave, Chairman, Bingham County Board of Commissioners, P.O. Box 1028, Blackfoot, Idaho 83221.	July 10, 1992 ..	160018
Illinois:					
Cook (FEMA Docket No. 7052).	Village of Hoffman Estates	Sep. 23, 1992, Sep. 30, 1992, Daily Herald.	The Honorable Michael J. O'Malley, Mayor of the Village of Hoffman Estates, Cook County, 1200 North Gannon Drive, Hoffman Estates, Illinois 60196.	Sep. 15, 1992 .	170107 B
Cook (Docket No. FEMA–7054).	Unincorporated areas	Feb. 7, 1992, Feb. 14, 1992, Chicago Tribune.	Mr. Richard J. Phelan, President of the Cook County Board of Commissioners, County Building, Room 537, 118 North Clark Street, Chicago, Illinois 60602.	Jan. 27, 1992 .	170054 B
Kansas:					
Johnson	City of Olathe (Docket No. 7054).	Oct. 23, 1992, Oct. 30, 1992, Olathe Daily News.	The Honorable Jacob Ruf, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66061.	Oct. 6, 1992	200173
Massachusetts:					
Plymouth (FEMA Docket No. 7051).	Town of Wareham	July 30, 1992, Aug. 6, 1992, Wareham Courier.	Mr. Charles P. Balczun, Administrator of the Town of Wareham, Plymouth County, 54 Marion Road, Wareham, Massachusetts 02571.	July 22, 1992 ..	255223 D
Minnesota:					
Hennepin (FEMA Docket No. 7051).	City of Plymouth	Sep. 2, 1992, Sep. 9, 1992, Plymouth Sailor.	The Honorable Kim Bergman, Mayor of the City of Plymouth, Hennepin County, 3400 Plymouth Boulevard, Plymouth, Minnesota 55447.	Aug. 24, 1992 .	270179 C
Oklahoma:					
Canadian/Cleveland ...	City of Oklahoma City (Docket No. 7052).	Sep. 23, 1992, Sep. 30, 1992, Journal Record.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Sep. 10, 1992 .	405378
Canadian/Cleveland ...	City of Oklahoma City (Docket No. 7054).	Oct. 22, 1992, Oct. 29, 1992, Journal Record.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Oklahoma City, Oklahoma 73102.	Oct. 5, 1992	405378
Cleveland	City of Norman (Docket No. 7052).	Sep. 29, 1992, Oct. 6, 1992, Norman Transcript.	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070.	Sep. 23, 1992 .	400046

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Oregon:					
Curry County	Unincorporated areas (Docket No. 7053).	Sep. 9, 1992, Sep. 16, 1992, Curry County Reporter.	The Honorable Peg Reagan, Commissioner, Curry County Board of Commissioners, P.O. Box 746, Gold Beach, Oregon 97444.	Aug. 17, 1992	410052
Jackson	City of Phoenix (Docket No. 7052).	Oct. 22, 1992, Oct. 29, 1992, Medford Mail Tribune.	The Honorable Otto Carter, Mayor, City of Phoenix, P.O. Box 666, Phoenix, Oregon 97535.	Sep. 28, 1992	410097
Jackson	Unincorporated areas (Docket No. 7054).	Oct. 22, 1992, Oct. 29, 1992, Medford Mail Tribune.	The Honorable Sue Kuplilas, Chairperson, Jackson County Board of Commissioners, Jackson County Courthouse, Room 200, 10 South Oakdale, Medford, Oregon 97501.	Oct. 5, 1992	415588
Pennsylvania:					
Lycoming (FEMA Docket No. 7049).	Township of Fairfield	Aug. 5, 1992, Aug. 12, 1992, Williamsport Sun-Gazette.	Mr. Robert A. Wein, Chairman of the Fairfield Township of Supervisors, Lycoming County, R.D. No. 1, Box 464, Montoursville, Pennsylvania 17754.	July 27, 1992	420972 B
York (FEMA Docket No. 7049).	Township of Dover	Aug. 24, 1992, Aug. 31, 1992, York Dispatch.	Mr. James Euclide, Chairman of the Township of Dover Board of Supervisors, York County, 2480 West Canal Road, Dover, Pennsylvania 17315.	July 27, 1992	420920 B
Tennessee:					
Shelby (FEMA Docket No. 7052).	City of Memphis	Sep. 16, 1992, Sep. 23, 1992, The Commercial Appeal.	The Honorable W.W. Herenton, Mayor of the City of Memphis, Shelby County, 125 North Mid-America Mall, Memphis, Tennessee 38103.	Sep. 10, 1992	470117 C
Texas:					
Tarrant and Denton (Docket No. FEMA-7054).	City of Fort Worth	Jan. 23, 1992, Jan. 30, 1992, Fort Worth Star-Telegram.	The Honorable Kay Granger, Mayor of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Jan. 17, 1992	480596 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: February 19, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-4516 Filed 2-25-93; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-7055]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modifications of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the Office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regualtory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12278, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Placer	City of Rocklin	Jan. 19, 1993, Jan. 26, 1993, The Placer Herald.	The Honorable Peter Hill, Mayor, city of Rocklin, P.O. Box 1136, Rocklin, California 95677.	Jan. 12, 1993 .	060242
San Diego	City of San Diego	Jan. 22, 1993, Jan. 29, 1993, San Diego Daily Transcript.	The Honorable Susan Golding, mayor, city of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Jan. 12, 1993 .	060295
Connecticut: Fairfield	Town of Weston	Jan. 6, 1993, Jan. 13, 1993, The Weston Forum.	The Honorable George C. Guidera, First Selectman of the Town of Weston, Fairfield County, P.O. Box 1007, Weston, Connecticut 06883.	Dec. 30, 1992 .	090016 B
Illinois:					
Kane and DuPage	City of Batavia	Dec. 31, 1992, Jan. 7, 1993, Kane County Chronicle.	The Honorable Jeffery D. Schielke, mayor of the city of Batavia, Kane and DuPage Counties, 101 North Island Avenue, Batavia, Illinois 60510.	Dec. 22, 1992 .	170321 A
DuPage	City of Darien	Dec. 23, 1992, Dec. 30, 1992, Bolingbrook Metropolitan.	The Honorable Carmen Soldado, mayor of the city of Darien, DuPage County, 1702 Plainfield Road, Darien, Illinois 60559.	Dec. 15, 1992 .	170750 A
McLean	Town of Normal	Jan. 7, 1993, Jan. 14, 1993, The Normalite.	The Honorable Paul Harmon, mayor of the town of Normal, McLean County, 100 East Phoenix Avenue, Normal, Illinois 61761.	December 29, 1992.	170502 B
Michigan:					
Berrien	Township of Royalton	Oct. 21, 1992, Oct. 28, 1992, The Journal Era.	Mr. Harley Marschke, supervisor for the township of Royalton, Berrien County, 980 Miners Road, St. Joseph, Michigan 49085.	Sept. 30, 1992	260043 B
Oakland	Township of Bloomfield	Apr. 23, 1992, Apr. 30, 1992, The Birmingham Eccentric.	Mr. Fred Korzon, supervisor of the township of Bloomfield, Board of Trustees, Oakland County, P.O. Box 489, Bloomfield Hills, Michigan 48303–0489.	Apr. 7, 1992	260169 B&C
New Jersey:					
Union	Borough of Garwood	Dec. 24, 1992, Dec. 31, 1992, Cranford Chronicle.	The Honorable Fred Strahlendorf, mayor of the borough of Garwood, Union County, Municipal Building, 403 South Avenue, Garwood, New Jersey 07027.	Dec. 16, 1992 .	340464 B
New York: Rockland	Town of Ramapo	Jan. 15, 1993, Jan. 22, 1993, Rockland Journal.	The Honorable Herbert Reisman, supervisor of the town of Ramapo, Rockland County, 237 Route 59, Suffern, New York 10901.	Jan. 6, 1993 ...	365340 C
Texas:					
Denton	City of Denton	Jan. 13, 1993, Jan. 20, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, mayor, city of Denton, 215 East McKinney Street, Denton, Texas 76201.	Dec. 10, 1992 .	480194
Harris	Unincorporated areas	May 15, 1992, May 22, 1992, Houston Chronicle.	The Honorable John Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Suite 911, Houston, Texas 77002.	May 7, 1992 ..	480287 G
Virginia: Campbell	Town of Altavista	Feb. 3, 1993, Feb. 10, 1993, The Altavista Journal.	The Honorable J.R. Burgess, mayor, town of Altavista, 510 Seventh Street, Drawer 420, Altavista, Virginia 24517.	Dec. 9, 1992 ...	510029

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wisconsin: Dane	Village of Cross Plains	Jan. 7, 1993, Jan. 14, 1993, News Scene Arrow	Mr. Richard Griffin, President for the village of Cross Plains, Dane County, 2107 Julius Street, Cross Plains, Wisconsin 53528-9499.	Dec. 23, 1992	550061 B
Juneau	City of Elroy	Apr. 16, 1992, Apr. 23, 1992, Tribune Keystone.	The Honorable Don Picha, mayor of the city of Elroy, Juneau County, 225 Main Street, Elroy, Wisconsin 53929-1251.	Mar. 11, 1992	550201 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: February 19, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-4517 Filed 2-25-93; 8:45 am]

BILLING CODE 6718-05-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Scottsdale (City), Maricopa County (FEMA Docket No. 7088)	
Galloway Wash Middle Branch:	
Approximately 50 feet upstream of Pima Road	*2,598
At Cow Tract Drive	*2,619
Galloway Wash Lower Branch:	
Just upstream of Pima Road	*2,555
Approximately 500 feet upstream of Pima Road	*2,596
Maps are available for review at the City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Heber Springs (City) Cleburne County (Docket No. 7008)	
Sulphur Creek:	
Approximately 2,400 feet downstream of Hollowell Drive	*289
Approximately 7,700 feet upstream of South 12th Street	*374
Greers Ferry Lake:	
Entire lake	*480
Maps are available for review at Municipal Building, 1001 West Main Street, Heber Springs, Arkansas.	
CALIFORNIA	
Corning (City), Tehama County (Docket No. 7015)	
Jewett Creek:	
At Woodson Avenue	*273
Approximately 300 feet downstream of Toomes Avenue	*278
Approximately 200 feet downstream of Interstate Highway 5 northbound lane	*283
Maps are available for review at Department of Public Works, City Hall, 794 Third Street, Corning, California.	
Grass Valley (City), Nevada County (FEMA Docket No. 7008)	
Wolf Creek:	
Just downstream of Idaho-Maryland Road near intersection of Sutton Way	*2,528
Just upstream of confluence of White Water Creek	*2,566
Little Wolf Creek:	
Just upstream of State Highway 49	*2,389
Just upstream of South Auburn Street	*2,407
Just above a private drive, 1,000 feet upstream of South Auburn Street	*2,461
Approximately 350 feet upstream of a private drive	*2,452
Maps are available for review at City Hall, 125 East Main Street, Grass Valley, California.	
San Clemente (City), Orange County (FEMA Docket No. 7030)	
Cascadita Creek:	
Approximately 200 feet downstream of Via Cascadita	*29
Just upstream of Via Cascadita	*40
Approximately 1,700 feet upstream of Via Cascadita	*63
Approximately 250 feet downstream of the San Diego Freeway	*77
Maps are available for review at the Department of Community Development, 910 Negocio, San Clemente, California.	
LOUISIANA	
East Baton Rouge Parish (Unincorporated Areas) (FEMA Docket Nos. 7034 and 7050)	
Amite River:	
At confluence with Bayou Manchac	*20
At upstream Parish boundary	*110
Blackwater Bayou:	
At upstream side of Blackwater Road	*76
Approximately 1.0 mile upstream of Blackwater Road	*78
Blackwater Bayou Tributary No. 1:	
Approximately 25 feet upstream of McCullaugh Road	*78
Approximately 5.8 miles upstream of confluence with Blackwater Bayou	*79
Blackwater Bayou Tributary No. 2:	
At confluence with Blackwater Bayou	*78
Approximately .6 mile upstream of confluence with Blackwater Bayou	*78
Clay Cut Bayou:	
At the confluence with Amite River	*25
Approximately 1.0 mile upstream of confluence with Amite River	*26
Comite River:	
At the confluence with Amite River	*45
Just downstream of Greenwell Springs Road	*47
Draughens Creek:	
At the confluence with Comite River	*47
Approximately 2.2 miles upstream of confluence with Comite River	*47
Beaver Bayou:	
At the confluence with Comite River	*47
Approximately 900 feet upstream of Frenchtown Road	*47
Engineer Depot Canal:	
At the confluence with Comite River	*47
Approximately 850 feet upstream of Sarasota River	*47
Hub Bayou:	
At the confluence with Amite River	*84
Approximately .4 mile upstream of State Route 37	*84
Draughens Creek:	
Approximately 180 feet upstream of Magnolia Bridge Road	*58
Approximately 150 feet upstream of Wax Road	*58
Maps available for inspection at the Flood Office, Engineering Department, 4th Floor, Municipal Building, North Street, Baton Rouge, Louisiana.	
MAINE	
Dover-Foxcroft (town), Piscataquis County (FEMA Docket No. 7048)	
Piscataquis River:	
Approximately 3,000 feet downstream of corporate limits	*301
At upstream corporate limits	*367
Fox Brook:	
At confluence with Piscataquis River	*318
Approximately 50 feet upstream of upstream side of State Route 7	*391
Dunham Brook:	
Approximately 200 feet upstream from confluence with Piscataquis River	*348
At downstream side of Forest Street	*368
Davee Brook:	
At upstream side of Railroad Avenue	*349
Approximately 220 feet downstream of confluence of East Branch Davee Brook	*374
East Branch Davee Brook:	
Approximately 120 feet upstream of confluence with Davee Brook	*374
Approximately 190 feet upstream of upstream side of State Route 153	*374
Brann's Mill Pond Outlet:	
At upstream side of Brann's Mill Pond Dam	*440
At confluence of Brann's Mill Pond	*443
Sebec Lake: Entire shoreline within community	*329
Garland Pond: Entire shoreline within community	*567
Brann's Mill Pond: Entire shoreline within community	*443
Maps available for inspection at Dover-Foxcroft Town Office, 34 E. Main Street, Dover-Foxcroft, Maine.	
St. George (town), Knox County (FEMA Docket No. 7053)	
Stream to Mosquito Harbor:	
At mouth	*10
Approximately 40 feet upstream of Ridge Road	*28
Stream to the Marsh:	
At mouth	*10
Approximately 80 feet upstream of State Route 131	*12
Maps available for inspection at the Town Office, St. George, Maine.	
MASSACHUSETTS	
Webster (town), Worcester County (FEMA Docket No. 7036)	
Lake Webster: Entire shoreline	*461
Maps available for inspection at the Town Hall, Building Inspector's office, Engineering Department, Webster, Massachusetts.	
MINNESOTA	
Chisago County (Unincorporated Areas) (FEMA Docket No. 7056)	
South Center Lake: Entire shoreline	*901
North Center Lake: Entire shoreline	*901
North Lindstrom Lake: Entire shoreline	*901
South Lindstrom Lake: Entire shoreline	*901
Chisago Lake: Entire shoreline	*901
Lake Emily: Entire shoreline	*905
Ogren Lake: Entire shoreline	*901
Maps available for inspection at the Chisago County Building, 313 North Main, Room 174, Center City, Minnesota 55012.	
MISSOURI	
Riverview (village), St. Louis County (FEMA Docket No. 7055)	
Maline Creek:	
About 360 feet upstream of Riverview Drive	*433
About 1,160 feet downstream of Bellefontaine Road	*436
NEW HAMPSHIRE	
Hampstead (town), Rockingham County (FEMA Docket No. 7042)	
Hill Brook:	
At State Route 111	*219
Approximately 45 feet upstream of Sherry Lane	*231
Wash Pond Tributary:	
At confluence with Wash Pond	*235
Approximately 40 feet upstream of Kent Farm Road	*237
Wash Pond: Entire shoreline within community	*235
Shop Pond: Entire shoreline within community	*232
Island Pond: Entire shoreline within community	*207
Maps available for inspection at the Town Office, 11 Main Street, Hampstead, New Hampshire.	
NEW YORK	
Camillus, Town (Onondaga County) (FEMA Docket No. 7055)	
Long Pond Creek:	
Upstream of Detention Pond Outlet (approximately 1,320 feet downstream of Lyell Road)	*549
Approximately 1,100 feet upstream of Lyell Road	*558
Long Pond Creek Tributary:	
Just upstream of State Route 31 (Spencerport Road)	*541
At upstream side of Lyell Road	*550
Elmford Creek:	
At confluence with Round Pond Creek (corporate limits)	*517
Upstream side of Lyell Road	*566
Round Pond Creek:	
At confluence of Elmford Creek (corporate limits)	*517

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At Manitou Road	*571
Maps available for inspection at the Department of Public Works, Gates Town Hall, 1605 Buffalo Road, Rochester, New York 14624.	
Lyme, Town (Jefferson County) (FEMA Docket No. 7000)	
Chaumont River:	
At Village of Chaumont corporate limits	*250
At upstream corporate limits	*251
Lake Ontario: Entire shoreline within the community	*250
Chaumont Bay: Entire shoreline within the community	*250
Maps available for inspection at the Lyme Town Office, Main Street, Chaumont, New York.	
Middletown, Town (Delaware County) (FEMA Docket No. 7063)	
East Branch Delaware River:	
At downstream corporate limits	*1,327
At upstream corporate limits	*1,412
Dry Brook:	
At confluence with East Branch Delaware River	*1,339
Approximately 100 feet upstream of Erpf Road	*1,402
Bush Kill:	
At confluence with Dry Brook	*1,365
At upstream corporate limits	*1,466
Bennis Kill:	
At confluence with East Branch Delaware River	*1,394
At upstream corporate limits	*1,630
Vly Creek:	
Approximately 75 feet downstream of downstream corporate limits	*1,556
Approximately 25 feet upstream of upstream corporate limits	*1,714
Maps available for inspection at the Middletown Town Hall, Main Street, Margaretville, New York.	
Schoharie (Village), Schoharie County (FEMA Docket No. 7060)	
Schoharie Creek:	
Approximately 1.52 miles downstream of Bridge Street	*805
Approximately 0.74 mile upstream of Bridge Street	*812
Fox Creek:	
Approximately 0.35 mile downstream of State Route 30 (North Main Street)	*805
Approximately 335 feet upstream of Covered Bridge (North Main Street)	*805
Maps available for inspection at the Village Hall, Schoharie, New York.	
Watertown, City (Jefferson County) (FEMA Docket No. 7065)	
Coil Creek:	
At Hunt Street	*510
Approximately 50 feet downstream of Gifford Street	*513
Maps available for inspection at the City Engineers Office, Municipal Building, 245 Washington Street, Room 305, Watertown, New York.	
Watertown, Town (Jefferson County) (FEMA Docket No. 7064)	
Cold Creek:	
At confluence with the Black River	*486
Approximately 50 feet downstream of the most upstream crossing of State Route 12 (Gifford Street)	*531
Maps available for inspection at the Code Enforcement Office, 8673 Brookside Drive, Watertown, New York.	
NORTH DAKOTA	
Harwood (city), Cass County (FEMA Docket No. 7057)	
Sheyenne River:	
At northernmost corporate limit and between the Burlington Northern Railroad and Interstate Highway 29	*891
Intersection of Bender Boulevard and Bender Lane	*891
Just upstream of County Highway 22 and west of Interstate Highway 29	*893
At southern corporate limit and between Burlington Northern Railroad and Interstate Highway 29	*891
Red River of the North:	
At northernmost corporate limit and east of Burlington Northern Railroad	*890
Just downstream of County Highway 22	*890
At southernmost corporate limit and east of Burlington Northern Railroad	*891
Maps are available for review at the Harwood City Office, Main Street, Harwood, North Dakota.	
OKLAHOMA	
Sand Springs (City) Tulsa & Osage Counties (FEMA Docket No. 7055)	
Anderson Creek:	
At confluence with Fisher Creek	*656
Approximately 750 feet upstream of confluence with Fisher Creek	*660
West Blackboy Creek:	
Approximately 0.3 mile west downstream 81st W. Avenue	*657
Approximately 1.4 miles upstream of Old North Road	*792
Euchee Creek:	
Approximately 0.4 mile upstream of U.S. Route 64	*661
Approximately 1.1 miles upstream of Willow Street	*692
Fisher Creek:	
Approximately 200 feet upstream of confluence with Arkansas River	*649
Approximately 0.3 mile upstream of confluence with Arkansas River	*649
Blackboy Creek:	
Approximately 400 feet upstream of the downstream corporate limits	*674
Approximately 130 feet upstream of the upstream corporate limits	*722
Maps available for inspection at the Sand Springs Municipal Building, 100 East Broadway Street, San Springs, Oklahoma 74063.	
TEXAS	
Austin (city), Travis and Williamson Counties (FEMA Docket No. 7040)	
Boggy Creek North:	
Approximately 400 feet upstream of Delwau Lane	*433
Approximately 1,400 feet upstream of Wilshire Drive	*593
Tannehill Branch of Boggy Creek:	
At confluence with Boggy Creek North	*445
Approximately 1,590 feet upstream of Helen Street	*661
Boggy Creek Tributary 1:	
At confluence with Boggy Creek	*446
Approximately 1,640 feet upstream of the confluence	*452
East Boulkin Creek:	
Approximately 320 feet downstream of Riverside Drive	*443
Approximately 500 feet upstream of Fort McGruder Lane	*850
West Boulkin Creek:	
Approximately 70 feet upstream of Riverside Drive	*446
Approximately 100 feet upstream of Clawson Road	*640
Bull Creek:	
Approximately 350 feet upstream of confluence with Colorado River	*496
Approximately 200 feet upstream of Bull Creek Tributary 5	*753
Bull Creek Tributary 1:	
At confluence with Bull Creek	*508
Approximately 446 feet upstream of FM 2222	*519
Bull Creek Tributary 2:	
At confluence with Bull Creek	*599
Approximately 1,125 feet upstream of the confluence	*741
Bull Creek Tributary 4:	
At confluence with Bull Creek	*718
Approximately 850 feet upstream of the confluence	*718
Cherry Creek:	
At confluence with Williamson Creek	*656
Approximately 1,120 feet upstream of Lazy Oaks River	*756
Colbrenouth Creek:	
At confluence with Onion Creek	*479
Approximately 50 feet upstream of U.S. Route 183	*497
Kicheon Branch of Williamson Creek (previously known as Dry Branch):	
At confluence with Williamson Creek	*678
Approximately 425 feet upstream of Escarpment Boulevard	*842
Foster Branch:	
At confluence with Shoal Creek	*698
Approximately 1,050 feet upstream of Cebeny Street	*749
Gilleland Creek Tributary 3:	
Approximately 440 feet downstream of downstream Interstate Route 35 Frontage Road	*806
Approximately 80 feet upstream of upstream Interstate Route 35 Frontage Road	*819
Givens Park Tributary No. 1:	
Approximately 180 feet upstream of confluence with Tannehill Branch of Boggy Creek	*484
Approximately 100 feet upstream of Anchor Lane	*558
Givens Park Tributary No. 2:	
At confluence with Givens Park Tributary No. 1	*493
Approximately 0.45 mile upstream of Martin Luther King Boulevard	*572
Hancock Branch:	
At confluence with Shoal Creek	*607
Approximately 290 feet upstream of Cullen Avenue	*714
Harris Branch:	
Approximately 1,900 feet downstream of Boyce Lane	*550
Approximately 0.40 mile downstream of Harris Branch Tributary No. 4	*592
Harris Branch Tributary No. 5:	
At confluence with Harris Branch	*567
Approximately 1,800 feet upstream of Cameron Road	*587
Hemphill Branch:	
At confluence with Waller Creek	*530
At West 33rd Street	*578
Johnson Creek:	
Approximately 500 feet upstream of confluence with Colorado River	*448
Approximately 170 feet upstream of Margarita Crescent North	*566
Little Walnut Creek:	
At confluence with Walnut Creek	*470
Approximately 800 feet upstream of Golden Meadow Drive	*725
Little Walnut Creek Tributary 1:	
At confluence with Little Walnut Creek	*536
Approximately 270 feet upstream of Interstate Route 35	*678
Little Walnut Creek Tributary 2:	
Approximately 220 feet upstream of confluence with Little Walnut Creek	*607

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet upstream of Rundberg Lane	*987
Little Walnut Creek Tributary 3 (Quail Creek):	
At confluence with Little Walnut Creek	*679
Approximately 0.41 mile upstream of Hunter's Trace	*714
Marble Creek:	
At confluence with Onion Creek	*536
Approximately 300 feet upstream of Thaxton Road	*561
Onion Creek:	
Approximately 0.84 mile downstream of FM 973	*450
Approximately 200 feet upstream of Interstate Route 35	*906
Possum Trot Branch:	
At confluence with Johnson Creek	*481
Approximately 200 feet upstream of Enfield Road	*546
Shoal Creek:	
Approximately 640 feet downstream of West Avenue	*445
Approximately 1,930 feet upstream of Union Pacific Railroad	*757
Sunset Valley Tributary of Williamson Creek:	
At confluence with Williamson Creek	*652
At Westgate Boulevard	*695
Waller Creek:	
At confluence with the Colorado River	*444
Approximately 960 feet upstream of Denson Drive	*681
Walnut Creek:	
At downstream crossing of Southern Pacific Railroad	*437
Approximately 50 feet upstream of Council Bluff Drive	*781
Walnut Creek Tributary 1:	
Approximately 1,600 feet upstream of confluence with Walnut Creek	*431
Approximately 0.84 mile upstream of upstream crossing of Southern Pacific Railroad	*483
Walnut Creek Tributary 2:	
At confluence with Walnut Creek	*440
At downstream face of Martin Luther King Jr. Boulevard	*486
Walnut Creek Tributary 3:	
At downstream face of U.S. Route 290 eastbound	*523
Approximately 220 feet upstream of U.S. Route 290 westbound	*526
Walnut Creek Tributary 4:	
Approximately 1,080 feet upstream of confluence with Walnut Creek	*500
Approximately 1,540 feet upstream of confluence with Walnut Creek	*500
Walnut Creek Tributary 5:	
Approximately 340 feet downstream of U.S. Route 290 eastbound	*512
Approximately 300 feet upstream of U.S. Route 290 westbound	*517
Walnut Creek Tributary 6:	
At confluence with Walnut Creek	*610
Approximately 0.45 mile upstream of upstream Interstate Route 35 Frontage Road	*661
Walnut Creek Tributary 7:	
At confluence with Walnut Creek	*693
Approximately 840 feet upstream of Bull Run	*732
Walnut Creek Tributary 7A:	
At confluence with Walnut Creek TGributary 7	*754
Approximately 0.65 mile upstream with Walnut Creek Tributary 7	*772
Walnut Creek Tributary 8:	
Approximately 125 feet upstream of confluence with Walnut Creek	*702
Approximately 100 feet upstream of Union Pacific Railroad	*695
Walnut Creek Tributary 9:	
At confluence with Walnut Creek	*710
Approximately 550 feet upstream of Howard Lane	*776
Walnut Creek Tributary 9 Diversion:	
At confluence with Walnut Creek	*711
At diversion from Walnut Creek Tributary 9	*730
Walnut Creek Tributary 10:	
At confluence with Walnut Creek	*757
Approximately 1,420 feet upstream of Del Robles Drive	*789
Wells Branch:	
At confluence with Walnut Creek	*627
At upstream face of Howard Lane	*734
West Bull Creek:	
At confluence with Bull Creek	*518
Approximately 0.63 mile upstream of most upstream crossing of FM 2222	*605
West Tributary 3 of Tannehill Branch:	
At confluence with Boggy Creek North Tributary 2 (Tannehill Branch)	*506
Approximately 40 feet upstream of Manor Road	*550
Williamson Creek:	
At confluence with Onion Creek	*524
Approximately 0.7 mile upstream of Covered Bridge Drive	*943
Williamson Creek Tributary 1:	
At confluence with Williamson Creek	*584
Approximately 150 feet upstream of Knuckols Crossing Road	*571
Williamson Creek Tributary 2:	
At confluence with Williamson Creek	*524
Approximately 200 feet downstream of Knuckols Crossing Road	*579
Williamson Creek Tributary 3:	
At confluence with Williamson Creek	*538
Approximately 320 feet upstream of Pino Lane	*567
Williamson Creek Tributary 4:	
At confluence with Williamson Creek	*589
At downstream face of Stassney Lane	*632
Williamson Creek Tributary 5:	
Approximately 300 feet upstream of confluence with Williamson Creek	*647
Approximately 370 feet upstream of Southbrook Drive	*913
Williamson Creek Tributary 6:	
At confluence with Williamson Creek	*613
Approximately 0.75 mile upstream of William Cannon Drive	*663
Long Hog Hollow:	
At confluence with Bull Creek	*624
Approximately 1.6 miles upstream of confluence with Bull Creek	*741
St. Edwards Branch:	
At confluence with East Bouldin Creek	*591
Approximately 800 feet upstream of Congress Avenue	*630
North Fork West Bouldin Creek:	
At confluence with West Bouldin Creek	*568
Approximately 60 feet upstream of Glen Ora	*626
Bull Creek Tributary 5:	
At confluence with Bull Creek	*751
Approximately 320 feet upstream of Spicewood Springs Road	*751

Maps available for inspection at the Austin City Hall, 505 Barton Springs Road, Austin, Texas

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Garland (City), Dallas County (FEMA Docket No. 7503)

Duck Creek: Tributary 2 Ct:	
Approximately 2,500 feet downstream of Interstate Highway 30	*450
Approximately 200 feet downstream of Interstate Highway 30	*460
Approximately 700 feet downstream of Rowlett Road	*469

Maps are available for review at City of Garland, 800 Main Street, Garland, Texas.

Hays County (Unincorporated Areas) (FEMA Docket No. 7040)

San Marcos River:	
Approximately 0.4 mile downstream of Bypass Creek	*562
Approximately 1.8 miles upstream of confluence of Blanco River	*574
Plum Creek:	
At the old State Route 22	*562
Approximately 0.9 mile upstream of Union Pacific Railroad	*731
Stream Plum-1:	
At confluence with Plum Creek	*632
Approximately 0.7 mile upstream of Union Pacific Railroad	*727
Brushy Creek:	
At State Route 21	*549
Approximately 0.6 mile upstream of dam	*563
Stream Brushy-1:	
At confluence with Brushy Creek	*557
Approximately 640 feet upstream of County Route 131	*645
Stream Brushy-1A:	
At confluence with Stream Brushy-1	*597
Approximately 0.5 mile upstream of County Route 157	*631
Cottonwood Creek:	
Approximately 200 feet downstream of County Route 266	*563
Approximately 1,580 feet upstream of confluence of Stream CC-2	*648
Stream CC-1:	
At confluence with Cottonwood Creek	*602
At upstream corporate limits	*606
Stream CC-2:	
At confluence with Cottonwood Creek	*644
Approximately 0.3 mile upstream of County Route 2439	*711
Stream CC-2D:	
At confluence with Cottonwood Creek	*637
At upstream corporate limits	*641
Blanco River:	
At confluence with San Marcos River	*572
Approximately 8.2 miles upstream of County Route 161	*1,029
Lone Man Creek:	
At confluence with Blanco River	*767
Approximately 3.2 miles upstream of Deer Lake Road	*1,044
Smith Creek:	
At confluence with Lone Man Creek	*877
Approximately 1.0 mile upstream of Deer Lake Road	*1,015
Cypress Creek:	
At confluence with Blanco River	*841
Approximately 1.5 miles upstream of confluence of Stream Cypress-1	*1,004
Stream Cypress-1:	
At confluence with Cypress Creek	*971
Approximately 0.7 mile upstream of dam	*1,035
Wilson Creek:	
At confluence with Blanco River	*848
Approximately 0.9 mile upstream of dam	*1,006
Willow Springs Creek:	
At downstream corporate limits	*637
Approximately 0.5 mile upstream of McCarty Lane	*716
Stream Tributary WS-1:	
At confluence with Willow Springs Creek	*672
Approximately 600 feet upstream of McCarty Lane	*706
Purgatory Creek:	
At downstream corporate limits	*607
Approximately 3.6 miles upstream of SCS Dam No. 4	*910
Stream Tributary PC-1:	
At confluence with Purgatory Creek	*656
Approximately 1.2 miles upstream of McCarty Lane	*793
Sink Creek:	
At Limekiln Road	*586
Approximately 4.4 miles upstream of SCS Dam No. 1	*802
Onion Creek:	
Approximately 660 feet downstream of County boundary	*648
Approximately 6.1 miles upstream of U.S. Route 12	*1,146
Bear Creek:	
Approximately 100 feet downstream of County boundary	*605
Approximately 1.9 miles upstream of FM 1826	*663
Little Bear Creek:	
At most downstream County boundary	*655
Approximately 3.6 miles upstream of confluence of Stream LB-1	*815
Stream LB-1:	
At confluence with Little Bear Creek	*743
Approximately 1.4 miles upstream of confluence with Little Bear Creek	*791
Stream Bear-1:	
At confluence with Bear Creek	*848
Approximately 140 feet upstream of County boundary	*924
Stream Bear-1A:	
At confluence with Stream Bear-1	*861
Approximately 1.9 miles upstream of FM 1826	*1,039
Stream Bear-2:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Bear Creek	*850
Approximately 0.9 mile upstream of confluence with Bear Creek	*920
Barton Creek:	
At County boundary	*951
At Ranch Road 12	*1,026
Long Branch:	
At County boundary	*1,036
Approximately 125 feet upstream of dam	*1,160
Stream BC–1:	
At confluence with Barton Creek	*955
Approximately 0.6 mile upstream of confluence of BC–1A	*1,151
Stream BC–1A:	
At confluence with Stream BC–1	*1,085
Approximately 1,870 feet upstream of confluence with Stream BC–1	*1,124
Roy Branch:	
At confluence with Barton Creek	*962
Approximately .4 mile upstream of Oakwood Lane	*1,105
Cottonwood Branch:	
At confluence with Roy Branch	*993
Approximately 1,620 feet upstream of Right Bank Dam	*1,086
Little Barton Creek:	
At confluence with Barton Creek	*966
Approximately 1.7 miles upstream of State Route 12	*1,248
Stream BC–2:	
530 feet upstream of confluence with Barton Creek	*1,100
Approximately .9 mile upstream of confluence of Stream BC–2A	*1,227
Stream BC–2A:	
At confluence with Stream BC–2	*1,154
Approximately 1.0 mile upstream of confluence with Stream BC–2	*1,236
Schoolhouse Hollow:	
630 feet upstream of confluence with Barton Creek	*1,123
Approximately 275 feet upstream of confluence of Stream SH–1	*1,192
Stream SH–1:	
At confluence with Schoolhouse Hollow	*1,186
Approximately 0.7 mile upstream of confluence with Schoolhouse Hollow	*1,252
Bypass Creek:	
Approximately .9 mile downstream of confluence of Bypass Creek Tributary–2	*587
Approximately 1 mile upstream of Uhland Road	*607
Bypass Creek Tributary–2:	
At downstream corporate limits	*580
Approximately 680 feet upstream of Uhland Road	*587

Maps available for inspection at the County Courthouse, Broadway, San Marcos, Texas.

Manor (city), Travis County (FEMA Docket No. 7040)

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Gilleland Creek:	
At upstream face of Parsons Street	*508
At downstream face of eastbound U.S. Route 290	*513

Maps available for inspection at the Manor City Hall, 201 E. Parsons, Manor, Texas.

Round Rock (city), Travis and Williamson Counties (FEMA Docket No. 7040)

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Gilleland Creek:	
Approximately 1,200 feet upstream of confluence of Gilleland Creek Tributary 3	*792
Approximately 300 feet upstream of Interstate Route 35	*817

Maps available for inspection at the Round Rock City Hall, 221 E. Main Street, Round Rock, Texas.

Sunset Valley (city), Travis County (FEMA Docket No. 7040)

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Kincheon Branch of Williamson Creek (previously known as Dry Branch):	
At confluence with Williamson Creek	*678
Approximately 0.6 mile upstream of the confluence with Williamson Creek	*683
Sunset Valley Tributary of Williamson Creek:	
At upstream face of Westgate Boulevard	*686
Approximately 0.8 mile upstream of Lone Oak Road	*700
Williamson Creek:	
At upstream face of Westgate Boulevard	*685
Approximately 80 feet downstream of Brodie Lane	*707

Maps available for inspection at the Sunset Valley City Hall, 2 Lone Oak Trail, Austin, Texas.

Travis County (Unincorporated Areas) (FEMA Docket No. 7040)

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Barton Creek:	
Approximately 0.75 mile downstream of Fitzhugh Road	*940
Approximately 50 feet upstream of Hays County-Travis County boundary	*951
Bear Creek:	
At its confluence with Onion Creek	*519
At Hays County-Travis County boundary	*606
Stream Bear-1:	
Approximately 380 feet downstream of Hays County-Travis County boundary	*921
Approximately 700 feet upstream of Hays County-Travis County boundary	*930
Boggy Creek South:	
At confluence with Onion Creek	*560
Approximately 140 feet upstream of Bluff Springs Road	*560
Bull Creek:	
Approximately 1.2 miles upstream of confluence of Long Hog Hollow	*658
At a point approximately 200 feet upstream of Bull Creek Tributary 5	*753
Bull Creek Tributary 4:	
Approximately 200 feet upstream of confluence with Bull Creek	*716
Approximately 850 feet upstream of the confluence with Bull Creek	*716
Cottonmouth Creek:	
Approximately 0.45 mile upstream of confluence with Onion Creek	*481
Approximately 50 feet upstream of Sassman Road	*606
Kincheon Branch of Williamson Creek (previously known as Dry Branch):	
Approximately 0.6 mile upstream of confluence with Williamson Creek	*665
Approximately 425 feet upstream of Escarpment Boulevard	*542
Gilleland Creek:	
Approximately 450 feet downstream of Taylor Lane	*419
Approximately 200 feet upstream of Interstate Route 35	*617
Gilleland Creek Tributary 1:	
At confluence with Gilleland Creek	*449
Approximately 1,180 feet upstream of the confluence with Gilleland Creek	*450
Gilleland Creek Tributary 2:	
At confluence with Gilleland Creek	*546
At upstream face of Dessau Road	*675
Gilleland Creek Tributary 3:	
At confluence with Gilleland Creek	*783
At downstream side of Interstate Route 35 (Frontage Road)	*811
Harris Branch:	
At confluence with Gilleland Creek	*529
Approximately 0.72 mile upstream of Cape Cod Drive	*742
Harris Branch Tributary No. 3:	
At confluence with Harris Branch	*663
Approximately 1.75 mile upstream of the confluence	*748
Harris Branch Tributary No. 4:	
At confluence with Harris Branch	*573
Approximately 50 feet upstream of Dessau Road	*597
Harris Branch Tributary No. 5:	
Approximately 80 feet downstream of Cameron Road	*673
Approximately 100 feet upstream of Yager Lane	*697
Little Bear Creek:	
At confluence with Bear Creek	*636
At Hays County-Travis County boundary	*675
Long Branch:	
Approximately 0.55 mile downstream of Hays County-Travis County boundary	*1,015
At Hays County-Travis County boundary	*1,036
Marble Creek:	
Approximately 160 feet downstream of Colton Bluff Springs Road	*549
Approximately 50 feet upstream of Old Lockhart Highway	*643
Onion Creek:	
Approximately 280 feet upstream of confluence with Colorado River	*414
At Hays County-Travis County boundary	*649
Rinard Creek:	
At confluence with Onion Creek	*578
Approximately 1,440 feet upstream of Bradshaw Road	*578
Slaughter Creek:	
At confluence with Onion Creek	*573
Approximately 0.79 mile upstream of confluence with Onion Creek	*574
Walnut Creek:	
Approximately 1,160 feet downstream of confluence of Walnut Creek Tributary 3	*488
Approximately 0.5 mile upstream of upstream crossing of Southern Pacific Railroad	*606
Walnut Creek Tributary 3:	
At confluence with Walnut Creek	
Approximately 1.85 mile upstream of U.S. Route 290 westbound	*576
Walnut Creek Tributary 4:	
At confluence with Walnut Creek	*500
Approximately 70 feet downstream of Springdale Road	*545
Walnut Creek Tributary 5:	
At confluence with Walnut Creek	*512
Approximately 0.50 mile upstream of Sarsom Road	*556
Walnut Creek Tributary 10:	
Approximately 360 feet upstream of Del Robles Drive	*759
Approximately 50 feet downstream of McNeil Drive	*803
Wells Branch:	
At upstream face of Howard Lane	*734
Approximately 750 feet upstream of Wells Branch Parkway	*775
Williamson Creek:	
Approximately 80 feet downstream of Brodie Lane	*707
Approximately 1,650 feet upstream of Brodie Lane	*720

Maps available for inspection at Public Improvements and Transportation, 811 Barton Springs Road, Suite No. 750, Austin, Texas.

WASHINGTON

Ferry County (unincorporated areas) (FEMA Docket No. 7062)

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Kettle River:	
Approximately 3.7 miles upstream from the confluence of Cottonwood Creek with Kettle River	*1,811
Approximately 4.33 miles upstream from the confluence of Cottonwood Creek with Kettle River	*1,814
Approximately 4.7 miles upstream from the confluence of Cottonwood Creek with Kettle River	*1,816

Maps are available for review at the Ferry County Planning Department, 157 North Clark, Suite 7, Republic, Washington.

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
WEST VIRGINIA	
Jefferson County (unincorporated areas) (FEMA Docket No. 7083)	
Evitts Run:	
Approximately 280 feet downstream of County Route 36	*427
Approximately 0.8 mile upstream of confluence of Tributary A	*515
Tributary A:	
At confluence with Evitts Run	^507
At upstream side of Private Road	*520
Flowing Springs Run:	
At upstream side of U.S. Route 340	*385
Approximately 860 feet upstream of Norfolk and Western Railway	^512
Map available for inspection at the Planning Commission Department, 104 E. Washington Street, Charles Town, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: February 19, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–4518 Filed 2–25–93; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[MD Docket No. 92–92; FCC 93–49]

Privacy Act Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopted (FCC 93–49) a final rule to exempt two systems of records entitled "FCC/OIG–1, Criminal Investigative Files" and "FCC/OIG–2, General Investigative Files," from certain sections of the Privacy Act of 1974. The Commission took this action in order to comply with the Privacy Act of 1974.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: William Cline, Privacy Act Officer, Records Management Division, (202) 632–7513.

SUPPLEMENTARY INFORMATION: The Commission adopted a NPRM proposing new rules to provide for the exemption of two new Privacy Act systems of records from certain provisions of its regulations implementing the Privacy Act of 1974. (57 FR 21052; May 18, 1992.)

List of Subjects in 47 CFR Part 0

Privacy.

Amendatory Text

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.561 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 0.561 Exemptions.

* * * * *

(f) *System name.* Criminal Investigative Files—FCC/OIG–1. Compiled for the purpose of criminal investigations. This system of records is exempt pursuant to section (j)(2) of the Act because the records contain investigatory material compiled for criminal law enforcement purposes.

(g) *System name.* General Investigative Files—FCC/OIG–2. Compiled for law enforcement purposes. This system of records is exempt pursuant to section (k)(2) of the Act because the records contain investigatory material compiled for law enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4434 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. 89–B]

Bus Testing Program: Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting between the Federal Transit Administration (FTA) and the Community Transportation Association of America (CTAA) to further gather information to assist the FTA in establishing a process for the testing of small buses under the FTA's bus testing program. Such testing is statutorily mandated by section 12(h) of the Federal Transit Act, as amended. This meeting is open to the public, and the meeting site is accessible to persons with disabilities.

DATES: The meeting will take place on Monday, March 8, 1993, from 2:30 p.m. to 4 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held in the Cabinet Room of the Capitol Hill Quality Hotel, 415 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Steven A. Barsony, Director, Office of Engineering, Office of Technical Assistance and Safety, FTA, at (202) 366–0090.

SUPPLEMENTARY INFORMATION:

Background

By interim final rule published February 23, 1993 (58 FR 10989), the FTA has delayed the effective date of its bus testing regulation as applied to small buses until October 1, 1993, and extended the comment period for 120 days. In this connection, the goal of the meeting described in this notice is to receive advice and recommendations on means of implementing testing procedures for the two remaining categories of vehicles which must be tested under the FTA's bus testing regulation (49 CFR part 665).

Meeting Procedures

A written transcript of the meeting will be included in the docket for the bus testing rule (89–B). This meeting is open to members of the public, and is accessible to persons with disabilities. Interpreters will be provided for persons with hearing disabilities if requested in advance.

Issued on: February 24, 1993.

Robert H. McManus

Acting Administrator.

[FR Doc. 93–4655 Filed 2–24–93; 4:04 pm]

BILLING CODE 6910–57–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1004

[Ex Parte No. MC–55 (Sub 87)]

Interpretations and Routing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is eliminating the requirement that private carriers engaged in incidental for-hire transportation must conduct such operations independently of their private operations and maintain separate records for each operation. The Commission finds that this requirement is no longer necessary to discharge its

regulatory responsibilities and that the burden of maintaining separate accounts is no longer justified.

EFFECTIVE DATE: This action is effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Maynard Dixon, (202) 927–5293; Joseph Dettmar, (202) 927–5660 (TDD for hearing impaired: 202–927–5721.)

SUPPLEMENTARY INFORMATION: By notice served and published in the Federal Register on June 1, 1992, (57 FR 23072) we proposed to eliminate the requirement that private carriers engaged in incidental for-hire transportation must conduct such operations independently of their private operations and maintain separate records for each operation. Comments in support of the proposal were received from the National Private Truck Council and the National-American Wholesale Grocers' Association, Inc. No comments were filed in opposition to the proposal. Based on the commentary, we find that the proposal is justified, and we adopt it.

Additional information is contained in the Commission's decision in Ex Parte No. MC–55 (Sub-No. 87). To purchase a copy of this decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 927–5721.)

Pursuant to 5 U.S.C. 605(b), we reaffirm our initial finding that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our proposal is to remove the burden of an unnecessary regulation from all private carriers holding operating authority, large and small. Because there is no reason to believe that the private firms holding operating authority or owning motor common carrier subsidiaries are predominantly small, the economic impact, if any, of our proposal is not likely to fall disproportionately on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1004

Administrative practice and procedure, Motor carriers.

Decided: February 12, 1993

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, title 49, chapter X, part 1004 of the Code of Federal Regulations is amended as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

1. The authority citation for part 1004 continues to read as follows:

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Subpart C also issued under 49 U.S.C. 10922(h)(1)(A).

§ 1004.3 [Removed]

2. Section 1004.3 is removed.

[FR Doc. 93–4521 Filed 2–25–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Endangered Status for the Cactus Leptocereus grantianus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Leptocereus grantianus* (no common name) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. This cactus is endemic to Culebra Island, Puerto Rico. Only one population, consisting of approximately 50 individuals, is known to occur on the southwestern coast of the island. It is threatened by proposed housing developments and erosion of its shoreline habitat. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Leptocereus grantianus*.

EFFECTIVE DATE: March 29, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Leptocereus grantianus was discovered on the island of Culebra in 1932 by Major Chapman Grant. It was later described by Nathaniel Britton from material cultivated by Grant. The population has been much reduced in numbers and areal extent over the years, and it has also died out in cultivation (Proctor 1991).

Leptocereus grantianus is a sprawling or suberect, nearly spineless cactus which may reach up to 2 meters in height and from 3 to 5 centimeters in diameter. The elongated stems have from three to five prominent ribs with broadly scalloped edges. Ribs of young joints are thin and the small areoles may bear from one to three minute, nearly black spines which disappear as the joints grow older. The flowers are solitary at terminal areoles, from 3 to 6 centimeters long, and nocturnal. The outer perianth segments are linear, green, and tipped by an areole like those of the tube and ovary. The inner perianth segments are numerous, cream-colored, oblong-obovate, obtuse and about 8 millimeters long. The fruit is subglobose to ellipsoid and about 4 centimeters in diameter (Britton 1933, Proctor 1991).

Leptocereus grantianus is endemic to Culebra, an island located just off the northeastern corner of Puerto Rico. On Culebra, only 1 population of approximately 50 individuals occurs in dry thickets along the rocky coast near Punta Melones (Proctor 1991). The island of Culebra is currently subject to intense pressure for rural and urban, as well as tourist, development. Housing projects are currently proposed for the area. The cactus is also threatened by erosion of the unstable, rocky slope.

Leptocereus grantianus was recommended for listing by Dr. George Proctor and Dr. Alain Liogier during a September 1988 meeting concerning the revision of the candicate plant species list in Puerto Rico and the U.S. Virgin Islands. It was subsequently included as a Category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice of review. A proposed rule to list *Leptocereus grantianus* as endangered was published on May 20, 1992 (57 FR 21374).

Summary of Comments and Recommendations

In the May 20, 1992, proposed rule and associated notifications, all interested parties were requested to

submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Juan Star on June 6, 1992, and in the El Día on June 3, 1992. Three letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources supported the listing of *Leptocereus grantianus* and stated that no additional information on the species was available. The U.S. Forest Service stated that they had no comments on the listing of the species.

The U.S. Army Corps of Engineers (Corps), Jacksonville District, stated that the Corps had no actions proposed or under consideration at the site described in the proposed rule, and that according to that information the species is outside of the Corps' regulatory jurisdiction under the Clean Water Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Leptocereus grantianus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Leptocereus grantianus* Britton are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Leptocereus grantianus is found on privately owned land near the town of Dewey in an area subject to intense pressure for various types of development. Currently there is a proposal for home construction in the area where the cactus occurs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The species has been cut in the past for livestock feed. In addition, its ornamental potential may result in take becoming a problem in the future (G. Proctor, pers. comm.).

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The most important factors affecting the continued survival of this species is its limited distribution and limited numbers. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. The steep rocky banks where the species is located are unstable and located close to the shoreline. Hurricane Hugo recently devastated Culebra and, although the impacts to this species were not documented, the passage of another hurricane might result in the elimination of this population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Leptocereus grantianus* as endangered. Only 1 population consisting of 54 individuals is known to exist. Clearing for development is an imminent threat to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the **Critical Habitat** section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time, as such a determination would result in no known benefit. The number of individuals of *Leptocereus grantianus* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of descriptions and maps required when critical habitat is designated would only increase the potential from such threats, and therefore could contribute to the species' decline. There are no ongoing or proposed Federal actions that will affect the species, and it does not appear that any are likely in the foreseeable future. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process, and also through the Section 7 jeopardy standard in the unlikely event that a Federal action should affect the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Leptocereus grantianus*, as discussed above. Federal involvement is not anticipated where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade

prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Leptocereus grantianus* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Britton, N. 1933. An undescribed cactus of Culebra Island, Puerto Rico. Cactus and Succ. Soc. Amer. 5:469.

Proctor, G. R. 1991. Status report on *Leptocereus grantianus* Britton. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Boquerón, Puerto Rico. 8 pp.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto, Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Cactaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Cactaceae—Cactus family:						
•	•	•	•	•	•	•
Leptocereus grantianus	None	U.S.A. (PR)	E	491	NA	NA
•	•	•	•	•	•	•

Dated: February 4, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–4448 Filed 2–25–93; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 58, No. 37
Friday, February 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-22]

Proposed Establishment of Transition Area; Deer Park, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a 700-foot transition area at Deer Park, Washington, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Deer Park Airport, Deer Park, Washington. The airspace would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 10, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 92-ANM-22, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2530.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 92-ANM-22, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700-foot transition area at Deer Park, Washington, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Deer Park Airport, Deer Park, Washington. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in § 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ANM WA TA Deer Park, WA
Deer Park Airport, WA (lat. 47°58'07" N, long. 117°25'21" W)

Deer Park Nondirectional Radio Beacon, WA
(lat. 47°58'04" N, long. 117°25'36" W)

That airspace extending from 700 feet above the surface within a 4-mile radius of the Deer Park Airport and within 1.5 miles either side of the 339° bearing of the Deer Park Nondirectional Radio Beacon extending from the 4-mile radius to 6.5 miles northwest of the Deer Park Airport excluding the Spokane, Washington, Transition Area.

* * * * *

Issued in Seattle, Washington, on February 9, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–4508 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 93

[Summary Notice No. PR–93–5]

Petition for Rulemaking; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking, this notice contains a summary of a petition filed by American Airlines, Inc. and Federal Express Corp. requesting the initiation of rulemaking procedures to amend Federal Aviation Regulations concerning allocation of commuter and air carrier IFR operations at high density traffic airports. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 25, 1993.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Federal Aviation Administration, Attn: Rules Docket No. 27160, 800 Independence Ave., SW., Washington DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB10A), 800 Independence Ave., SW., Washington DC 20591: telephone (202) 267–3132

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Manager, Air Traffic and Airspace Law Branch, (AGC–230), Regulations Division, Office of the Chief Counsel, 800 Independence Ave., SW., Washington DC 20591; telephone (202) 267–3491.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington DC on February 19, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Rulemaking

Docket No. 27160

Petitioners American Airlines, Inc. and Federal Express Corp.

Regulations Affected: 14 CFR 93.213(c) and 93.217(a)(1) and (a)(10).

Description of rule change sought: To modify subpart S of part 93 of the Federal Aviation Regulations (14 CFR 93.213 and 93.217) to restrict slot availability to foreign carriers at O'Hare International Airport by authorizing the FAA to withdraw existing slots from foreign air carriers, unless: (1) DOT certifies that the foreign carrier's country provides slots to U.S. carriers under procedures that are not more restrictive than 14 CFR 93.217; and (2) the foreign carrier does not own more than 10% of the voting stock of any U.S. carrier. The petition also requests that the FAA not withdraw slots from a U.S. carrier for a U.S. carrier that has more than 10% ownership by a foreign air carrier.

Petitioners reason for the request: This petition seeks to modify the rules that govern the withdrawal of slots from domestic carriers at O'Hare for the allocation of international slots to foreign carriers. Petitioners assert that foreign carriers gain an unfair advantage over U.S. carriers, in that other countries apply more restrictive slot rules to U.S. carriers in foreign countries than the U.S. applies at O'Hare to foreign operators under the provisions of § 93.217 (14 CFR 93.217).

[FR Doc. 93–4507 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Intent to Request Public Comments on Rules and Guides

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: The Federal Trade Commission ("Commission") gives notice that it intends to request public comments. The Commission will publish notices soliciting comments on the rules and guides listed below during 1993. No Commission determination on the need for or the substance of a rule, regulation, guide or interpretation or any other procedural option should be inferred from the intent to publish requests for comments. In certain instances, however, the reviews also will address other specific matters or issues, such as reviews mandated by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and issues concerning disclosure of measurements in metric terms. Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, Executive Order 12770 ("Metric Usage in Federal Government Programs"), 56 FR 35801 (July 25, 1991), and 1992 amendments to the Fair Packaging and Labeling Act ("FPLA"), 15 U.S.C. 1451, *et seq.*

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the Commission's contact person listed for each particular regulation.

SUPPLEMENTARY INFORMATION: The Commission is publishing a list of rules and guides for which it intends to request public comments during 1993. The Commission intends to publish documents requesting comments about the following items in 1993:

Agency Contact for the following items: Neil W. Averitt, Federal Trade Commission, Bureau of Competition, Washington, DC 20580, 202/326–2885.

(1) Guides for the Greeting Card Industry Relating to Discriminatory Practices (16 CFR part 244).

(2) Trade Regulation Rule on Discriminatory Practices in Men's and Boys' Tailored Clothing Industry (16 CFR part 412).

Agency Contact for the following item: Neil J. Blickman, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, 202/326–3038.

(3) Rule on Octane Posting and Certification (16 CFR part 306).

Agency Contact for the following items: Richard F. Kelly, Federal Trade Commission, Division of Service Industry Practices, Bureau of Consumer Protection, Washington, DC 20580, 202/326–3304.

(4) Trade Regulation Rule on Advertising and Labeling as to Size of Sleeping Bags (16 CFR part 400).

(5) Trade Regulation Rule on Deceptive Advertising and Labeling as

to Size of Tablecloths and Related Products (16 CFR part 404).

(6) Trade Regulation Rule on Deceptive Advertising and Labeling as to Length of Extension Ladders (16 CFR part 418).

Agency Contact for the following item: Anne Maher, Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, Washington, DC 20580, 202/326–2987.

(7) Trade Regulation Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (16 CFR part 410).

Agency Contact for the following items: Bret S. Smart, Federal Trade Commission, Los Angeles Regional Office, suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, 310/575–7975.

(8) Regulations under section 4 of the Fair Packaging and Labeling Act (16 CFR part 500).

(9) Exemptions from Requirements and Prohibitions under part 500 (16 CFR part 501).

(10) Regulations under section 5(c) of the Fair Packaging and Labeling Act (16 CFR part 502).

(11) Statements of General Policy or Interpretation [of the Fair Packaging and Labeling Act] (16 CFR part 503).

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Dennis A. Yao Concerning Commission Actions Pursuant to Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle

I dissented from the Commission's decision to schedule mandatory reviews of all regulations and guides on a recurring 10-year cycle because I was not persuaded that the Commission had sufficient information to show that the potential benefits from such a mandatory review process warranted diversion of resources from our positive enforcement agenda. A more flexible approach would have allowed the Commission, in my opinion, to identify and modify or rescind potentially problematic rules or guides while balancing the costs and benefits of these reviews against those of our enforcement agenda. See Dissenting Statement of Commissioner Dennis A. Yao Concerning Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle.

Nevertheless, since the Commission did adopt the 10-year mandatory review process that I opposed, I am voting in favor of the current motion because it is consistent with the 10-year mandatory review process that is now Commission policy.

[FR Doc. 93–4408 Filed 2–25–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 785, and 827

Withdrawal of Petition to Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of withdrawal.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) is announcing the withdrawal of a petition from the Joint National Coal Association/American Mining Congress (NCA/AMC) Committee on Surface Mining Regulations submitted pursuant to the Surface Mining Control and Reclamation Act.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208–2700.

SUPPLEMENTARY INFORMATION:

Background and Substance of Petition

OSM received a letter on November 25, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency propose for comment a rulemaking to revise the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" would encompass coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. The petition was included in the comments received from the Joint NCA/AMC Committee on a proposed rule to amend portions of OSM's permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). A Notice of Availability of the petition was published in the **Federal Register** on December 18, 1991 (56 FR 65716).

On January 8, 1993, OSM published in the **Federal Register** (58 FR 3466) the final rule to amend the permanent program regulations by revising the definition of "previously mined area" and by clarifying the requirements governing off-site coal preparation plants. Subsequent to the publication of the final rule, OSM received a letter from the NCA/AMC Committee dated January 11, 1993 withdrawing the petition. The letter stated in part that the Joint Committee decided to withdraw the petition to reevaluate the content and scope of its request for rulemaking.

After consideration of the comments received in response to the Notice of Availability and in light of the petitioners request to withdraw their petition, no further action will be taken on the petition.

Dated: February 19, 1993.

W. Hord Tipton,

Acting Director.

[FR Doc. 93–4505 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE6–1–5543; A–1–FRL–4661–7]

Approval and Promulgation of Air Quality ImplementationPlans; Delaware; Withdrawal of the General Motor–Wilmington Compliance Date Extension Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: Notice is hereby given that the State of Delaware has withdrawn its request for a State Implementation Plan (SIP) revision pertaining to a compliance date extension for the topcoat and final repair surface coating operations at the General Motors–Wilmington (GM-Wilmington) plant in Wilmington, Delaware.

FOR FURTHER INFORMATION CONTACT: Cynthia Stahl, (215) 597–9337, U.S. Environmental Protection Agency Region III, 841 Chestnut Building (3AT13), Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION: On October 15, 1984, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP) pertaining to a compliance date extension for the topcoat and final repair surface coating operations at the GM-Wilmington

automobile and light-duty truck assembly plant located in Wilmington, Delaware. On September 21, 1990 (55 FR 38814), EPA published a Notice of Proposed Rulemaking (NPR) to disapprove this compliance date extension for GM-Wilmington. On December 16, 1992, Delaware withdrew its request to approve the compliance date extension for the topcoat and final repair surface coating operations at the GM-Wilmington plant. EPA is hereby informing all interested parties that Delaware has withdrawn this request for a revision to its SIP.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 12, 1993.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–4532 Filed 2–25–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7061]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Newton (town), Dale County	
Choctawhatchee River:	
Approximately 2,000 feet downstream of the confluence of Hurricane Creek	*171
Downstream side of State Route 123	*174
Maps available for inspection at the Town Hall, Newton, Alabama.	
Send comments to The Honorable Freddy Harden, mayor of the town of Newton, Dale County, P.O. Box 10, Newton, Alabama 36352.	
OHIO	
Arcanum, Village (Darke County)	
Painter Creek:	
At downstream corporate limits	*1,042
Approximately 1,800 feet upstream of upstream corporate limits	*1,049
Maps available for inspection at the Arcanum Village Hall, 104 West South Street, Arcanum, Ohio.	
Send comments to The Honorable B.G. Fourman, Mayor of the Village of Arcanum, Darke County, 104 West South Street, Arcanum, Ohio 45304.	

§67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
California	City of Mission Viejo, Orange County.	Trabuco Creek	Approximately 4,200 feet upstream of Viejo Road.	°235	°238
			Approximately 3,000 feet upstream of unnamed road.	°260	°255

Maps are available for review at City Hall, 26522 La Alameda, Suite 190, Mission Viejo, California.

Send comments to The Honorable Sharon Cody, Mayor, City of Mission Viejo, 26522 La Alameda, Mission Viejo, California 92691.

California	City of Orange	Alameda Storm Channel	Approximately 1,500 feet downstream of Hewes Street.	°308	None
	Orange County		At Hewes Street	°354	None
			At Linda Vista Street	°365	None
			At Jamestown Way	°393	None
			Approximately 500 feet upstream of Jamestown Way.	°398	None
		Handy Creek	Approximately 1,900 feet downstream of Orange Park Boulevard.	°404	°401

Maps are available for review at City Hall, 300 East Chapman Avenue, Orange, California.

Send comments to The Honorable Gene Beyer, Mayor, City of Orange, 300 East Chapman Avenue, Orange, California 92666.

California	Orange County (Unincorporated Areas).	Aliso Creek	Just downstream of El Toro Road	°614	°614
			Approximately 600 feet upstream of El Toro Road.	None	°625
			Approximately 1,000 feet downstream of Normandale Road.	None	°670
			Just upstream of Normandale Road	None	°684
			Approximately 6,600 feet upstream of Normandale Road.	None	°784
		Handy Creek	Approximately 1,700 feet downstream of Orange Park Boulevard.	°404	°401
			Just downstream of Orange Park Boulevard	°432	°431
			Just downstream of Meads Avenue	°446	°446
			At Amapola Avenue	°470	°472
			Approximately 300 feet upstream of Amapola Avenue.	°474	°474
		San Juan Creek	Approximately 1,920 feet downstream of Ortega Highway.	None	°143
			Just downstream of Ortega Highway	None	°160
			Approximately 440 feet upstream of Ortega Highway.	None	°171
		Serrano Creek	Just upstream of Bake Parkway	None	°363
			Just upstream of Trabuco Road	None	°438
			Just upstream of Dimension Drive (channel/overbank).	None	°652/659
			Approximately 370 feet downstream of Access Road (channel/overbank).	None	°676/680
			Approximately 900 feet upstream of Access Road in the north overbank.	None	;2
			Approximately 1,300 feet downstream of Lake Forest Drive in the north overbank.	None	;1
			Approximately 800 feet upstream of Lake Forest Drive in the north overbank.	None	;2
			Approximately 3,100 feet upstream of Lake Forest Drive.	None	°791
		Trabuco Creek	Approximately 1,000 feet upstream of Unnamed Road.	°245	°251
			Approximately 3,000 feet upstream of the City of Mission Viejo corporate limits.	°290	°275
			Approximately 3,050 feet upstream of the City of Mission Viejo corporate limits.	°295	None
			Approximately 7,750 feet upstream of the City of Mission Viejo corporate limits.	°355	None

Maps are available for review at 400 Civic Center Drive, Building 12, Room 314, Santa Ana, California.

Send comments to The Honorable Mike Ruane, Director, Orange County Environmental Management Agency, 400 Civic Center Drive, Santa Ana, California 92702.

California	San Juan Capistrano	San Juan Creek	Just downstream of the Atchison, Topeka and Santa Fe Railroad.	°72	°72
	Orange County		Just upstream of San Diego Freeway	°82	°80
			Just downstream of the confluence of Horno Creek.	°89	°88
			Approximately 1,540 feet upstream of La Novia Avenue (streamside/landside of levee).	°114/114	°112/110
			Approximately 7,700 feet upstream of La Novia Avenue.	None	°142
		Trabuco Creek	Just downstream of the Atchison, Topeka and Santa Fe Railroad.	None	°158

[redacted]	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At Camino Capistrano	None	*169
			At Viejo Road	None	*196
			Approximately 4,050 feet upstream of Viejo Road.	None	*258

Maps are available for review at City Hall, 32400 Paseo Adelanto, San Juan Capistrano, California.

Send comments to The Honorable Gil Jones, Mayor, City of San Juan Capistrano, 32400 Paseo Adelanto, San Juan Capistrano, California 92675.

Colorado	Arapahoe County, Unincorporated Areas.	Big Dry Creek	Approximately 2,000 feet downstream of East Dry Creek Road.	*5,570	*5,570
			Approximately 70 feet upstream of East Dry Creek Road.	*5,586	*5,590
			Just upstream of South Colorado Boulevard	*5,611	*5,612
			Approximately 400 feet upstream of South Colorado Boulevard.	*5,620	*5,620
		Goldsmith Gulch	Approximately 750 feet downstream of East Orchard Road.	*5,643	*5,643
			Just upstream of East Orchard Road	*5,667	*5,670
			At East Maplewood Avenue	*5,696	*5,696
			Just downstream of East Arapahoe Road	*5,769	*5,769
		Piney Creek	Approximately 650 feet upstream of the confluence with Cherry Creek.	*5,627	*5,627
			Just upstream of South Parker Road	*5,640	*5,643
			At South Ouray Street extended	*5,680	*5,680
			Approximately 13,700 feet upstream of South Parker Road.	*5,733	*5,733
		Willow Creek downstream of Englewood Dam.	Just downstream of South Holly Street	*5,538	*5,538
			Just upstream of East Arapahoe Road	*5,550	*5,542
			Approximately 2,260 feet upstream of East Arapahoe Road.	*5,555	*5,555
		Willow Creek upstream of Englewood Dam.	Approximately 250 feet downstream of East Dry Creek Road.	*5,603	*5,603
			Approximately 200 feet upstream of East Dry Creek Road.	*5,608	*5,612
			Just upstream of South Quebec Street	*5,636	*5,644
			Just upstream of East Mineral Drive	N/A	*5,670
			Just downstream of County Line Road (State Highway 470).	*5,706	*5,717

Maps are available for review at the Department of Engineering and Planning, 5434 South Prince Street, Littleton, Colorado.

Send comments to The Honorable Thomas R. Eggert, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.

Colorado	Larimer County (Unincorporated Areas).	Boxelder Creek	Approximately 3,600 feet downstream of State Highway 14.	None	*4,916
			Just upstream of Vine Drive	None	*4,963
			At County Road 50	None	*4,984
			At County Road 52	None	*5,018
			Just upstream of County Road 54	None	*5,049
			Just upstream of County Road 56	None	*5,082
			Approximately 50 feet downstream of County Road 58.	None	*5,110
			Just upstream of County Road 60	None	*5,148
			Approximately 50 feet downstream of County Road 62.	*5,183	*5,180
			Approximately 3,200 feet upstream of County Road 64.	*5,233	*5,226
		Boxelder Creek, Overflow Channel.	Approximately 1,800 feet downstream of State Highway 14, at the convergence with Boxelder Creek.	None	*4,917
			Approximately 1,700 feet upstream of Vine Drive.	None	*4,967
			Just downstream of County Road 50	None	*4,995
			At County Road 52	None	*5,020
			Approximately 3,000 feet upstream of County Road 52.	None	*5,033
		Boxelder Creek, Left Overbank.	At the convergence with Boxelder Creek	None	*5,115
		Divided Flow At Indian Creek	Approximately 3,600 feet upstream of the convergence with Boxelder Creek.	None	*5,130
			Approximately 6,000 feet upstream of the convergence with Boxelder Creek.	None	*5,139

Maps are available for review at Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.

Send comments to The Honorable Courtlyn W. Hotchkiss, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.

Colorado	Larimer County (Unincorporated Areas).	Cache La Poudre River	At Larimer-Weld County Line Road	None	*4,788
			Just upstream of Larimer County Road 32 East	None	*4,800
			At Greeley Canal #2 Diversion Structure	None	*4,817
			Just upstream of Harmony Road	*4,840	*4,842

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At Horsetooth Road	*4,858	*4,855
		Cache La Poudre River-Interstate Highway 25.	At the confluence with the Cache La Poudre River.	None	*4,818
		Divided Flow	At Larimer County Road 36 East	None	*4,833
			Approximately 2,250 feet upstream of Harmony Road, at the divergence from the Cache La Poudre River.	None	*4,850

Maps are available for review at Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.

Send comments to The Honorable Courtlyn W. Hotchkiss, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.

Georgia	Union County (Unincorporated Areas).	Nottely River	Approximately 0.4 mile downstream of Nicholson Bridge.	None	*1,848
			Approximately 1,450 feet upstream of Morris Ford Road.	None	*1,884
		Coosa Creek	At upstream side of Coosa Creek Road Bridge .	None	*1,822
			Approximately 1,900 feet upstream of Owltown Road Bridge.	None	*1,865

Maps available for inspection at Union County Courthouse, Zoning Administration, 114 Courthouse Street, Blairsville, Georgia.

Send comments to Mr. Glen Gooch, Commissioner of Union County, 114 Courthouse Street, Box 1, Blairsville, Georgia 30512.

Kentucky	City of Augusta, Bracken County.	Ohio River	At upstream corporate limits	*509	*510
			Approximately 0.5 mile downstream of upstream corporate limits.	*509	*510

Maps available for inspection at the Augusta City Hall, 219 Main Street, Augusta, Kentucky.

Send comments to The Honorable Louis Habermehl, Jr., Mayor of the City of Augusta, Bracken County, P.O. Box 85, Augusta, Kentucky 41002.

Nevada	City of Reno, Washoe County.	Dry Creek/Boynton Slough	Just upstream of East McCarran Boulevard	*4,393	*4,393
			Just downstream of Peckham Lane	None	*4,414
			Approximately 1,500 feet downstream of South Virginia Street.	*4,450	*4,452
			Approximately 600 feet upstream of Huffacker Lane.	*4,488	*4,490
			At Panorama Drive	*4,510	*4,513

Maps are available for review at the Community Development Engineering Department, 450 Sinclair Street, Third Floor, Reno, Nevada.

Send comments to The Honorable Pete Sferrazza, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505.

Nevada	Washoe County, Unincorporated Areas.	Dry Creek/Boynton Slough	Just upstream of East McCarran Boulevard	*4,393	*4,393
			Approximately 500 feet upstream of South McCarran Boulevard.	None	*4,425
			Approximately 350 feet downstream of South Virginia Street.	*4,458	*4,460
			Approximately 100 feet upstream of Dieringer Drive.	*4,532	*4,536
			Approximately 1,400 feet upstream of Holcomb Lane.	*4,651	*4,649
		Truckee River	Approximately 1,250 feet upstream of Mustang Ranch Road No. 2.	*4,326	*4,326
			Approximately 4,500 feet upstream of Mustang Ranch Road No. 1.	*4,337	*4,340
			Approximately 1,800 feet upstream of State Highway 45.	*4,361	*4,361

Maps are available for review at the Washoe County Department of Public Works, 1001 East 9th Street, Reno, Nevada.

Send comments to The Honorable Larry Beck, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.

New Jersey	Linden, City (Union County).	Peach Orchard Brook	At the confluence with West Brook	*12	*10
			Approximately 100 feet downstream of St. Georges Avenue.	*28	*27
		West Brook	At the confluence with Morses Creek	*12	*8
			At St. George Avenue	*40	*36

Maps available for inspection at the City Engineer's Office, City Hall, 301 North Wood Avenue, Room 208, Linden, New Jersey.

Send comments to The Honorable John T. Gregorio, Mayor of the City of Linden, Union County, City Hall, 301 North Wood Avenue, Linden, New Jersey 07036.

New York	Rockland, town, Sullivan County.	Beaver Kill	At its confluence of Willowemoc Creek	*1,277	*1,276
			At approximately 1.46 miles upstream of Old State Route 17.	*1,307	*1,306
		Little Beaver Kill	At confluence with Willowemoc Creek	*1,422	*1,421
			Approximately 150 feet upstream of County Route 178.	*1,468	*1,467
		Willowemoc Creek	At the confluence with Beaver Kill	*1,276	1,277

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.6 mile upstream of County Route 178.	*1,445	*1,444
		Stewart Brook	At confluence with Willowemoc Creek	*1,293	*1,290
			Approximately 530 feet upstream of the confluence with Willowemoc Creek.	*1,293	*1,290
		Cattail Brook	At confluence with Willowemoc Creek	*1,422	*1,421
			Approximately 350 feet upstream of confluence with Willowemoc Creek.	*1,422	*1,421

Maps available for inspection at the Town Clerk's Office, Main Street, Livingston Manor, New York.

Send comments to Mr. Elton Harris, Supervisor of the Town of Rockland, Sullivan County, Livingston Manor, New York 12758.

New York	Yorktown, town (Westchester County).	Shrub Oak Brook	Approximately 0.3 mile upstream of Barger Street.	*424	*423
			Approximately 0.2 mile upstream of U.S. Route 6.	*426	*425

Maps available for inspection at the Yorktown Town Hall, 363 Under Hill Avenue, Yorktown Heights, New York.

Send comments to Mr. Aaron Buck, Yorktown Town Supervisor, Westchester County, P.O. Box 703, 363 Under Hill Avenue, Yorktown Heights, New York 10598.

North Carolina	Burke County (Unincorporated Areas).	Linville River	At confluence with Lake James	None	*1,207
			Approximately 2.6 miles upstream of State Route 126.	None	*1,308

Maps available for inspection at the Burke County Resource Center, Morganton, North Carolina.

Send comments to Mr. Tom Robinson, Burke County Manager, P.O. Box 219, Resource Center, Morganton, North Carolina 28655.

North Carolina	Davie County (Unincorporated Areas).	Yadkin River	Approximately 1,300 feet downstream of Idols Dam.	None	*700
			Approximately 500 feet upstream of Interstate 40.	None	*710
		Carter Creek Tributary	At confluence of Carter Creek	None	*701
			Approximately 0.7 mile upstream of confluence of Carter Creek.	None	*701
		Carter Creek	Within community	None	*701
		Bailey Creek	Approximately 2,500 feet downstream of SR 1621.	None	*701
			Approximately 1,800 feet upstream of Private Drive.	None	*721
		Smith Creek	At mouth of Carter Creek	None	*701
			Approximately 1,000 feet upstream of Interstate 40.	None	*749

Maps available for inspection at the Davie County Courthouse, 123 South Main Street, Mocksville, North Carolina.

Send comments to Mr. Jim Stockert, Davie County Manager, 123 South Main Street, Mocksville, North Carolina 27028.

Oregon	Marion County, Unincorporated Areas.	Willamette River	Approximately 7,200 feet downstream of South River Road.	None	*157
			Approximately 4,000 feet upstream of South River Road.	None	*160
		Croisan Creek	Approximately 100 feet downstream of Private Drive, at the downstream City of Salem Corporate Limits.	None	*213
			Just downstream of Croisan Creek Road	None	*300
			Approximately 1,500 feet downstream of Kuebler Road.	None	*384
			Just upstream of Kuebler Road	None	*430
			Approximately 2,300 feet upstream of Balyntine Road.	None	*486

Maps are available for review at the Marion County Planning Department, 148 High Street, Salem, Oregon.

Send comments to The Honorable Mary Pearmine, Chairperson, Marion County Board of Commissioners, 100 High Street, NE., Salem, Oregon 97301.

Oregon	Polk County, Unincorporated Areas.	Glenn Creek	At the intersection of Glenn Creek Road and Doaks Ferry Road Northwest.	None	*253
			Approximately 600 feet downstream of Doaks Ferry Road Northwest.	None	*268
			Approximately 230 feet upstream of Doaks Ferry Road Northwest.	None	*291
			Approximately 650 feet downstream of 34th Avenue Northwest.	None	*352
		Gibson Creek	Approximately 450 feet upstream of Doaks Ferry Road Northwest.	None	*155
			Approximately 1.0 mile upstream of Doaks Ferry Road Northwest.	None	*169

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at Polk County Courthouse, 850 Main Street, Dallas, Oregon.					
Send comments to The Honorable Ralph Blanchard, Chairman, Polk County Board of Supervisors, 850 Main Street, Dallas, Oregon 97338.					
Oregon	City of Salem, Marion and Polk Counties.	West Fork Pringle Creek	Approximately 1,550 feet upstream of Madrona Avenue SE.	*213	*213
			Just upstream of Pringle Road SE	None	*244
			Approximately 750 feet upstream of Pringle Road SE.	None	*258
		Croisan Creek	Just upstream of Burlington Northern Railroad	*145	*145
			Just upstream of South River Road	None	*153
			Just upstream of Croisan Creek Road	None	*210
			Approximately 1,400 feet downstream of Kuebler Road.	None	*384
			Just upstream of Kuebler Road	None	*430
		Glenn Creek	Just upstream of Wallace Road	None	*139
			At Orchard Heights Road Northwest	None	*175
			Just upstream of Glenn Creek Road	None	*252
			Just upstream of Doaks Ferry Road	None	*285
			Approximately 2,970 feet upstream of Glenellen Court NW.	None	*311
		Gibson Creek	Just downsteram of Wallace Road	*135	*136
			Just upstream of Brush College Road NW	None	*151
			Just upstream of Doaks Ferry Road NW	None	*155
			Approximately 2,100 feet upstream of Doaks Ferry Road NW.	None	*159
Maps are available for review at the Department of Public Works, 555 Liberty Street, SE, Salem, Oregon.					
Send comments to The Honorable R.G. Andersen-Wyckoff, Mayor, City of Salem, 555 Liberty Street SE., room 220, Salem, Oregon 97301.					
Puerto Rico	Rio Culebrinas Basin	Rio Guayabo	Approximately 110 meters upstream of confluence with Bahia De Aguadilla (Atlantic Ocean.	None	*2.7
			At the confluence of Rio Culebra	None	*3.1
		Rio Culebra	Approximately 3.4 kilometers above confluence with Bahia De Aguadilla (Atlantic Ocean).	None	*12.0
			At the confluence with Rio Guayabo	None	*3.1
		Cano Guayabo	At confluence with Rio Guayabo	None	*7.1
			Approximately 1.5 kilometers upstream of confluence with Rio Guayabo.	None	*9.5
		Unnamed Stream	At confluence with Cano Guayabo	None	*9.5
			Approximately 510 meters upstream of confluence with Cano Guayabo.	None	*10.1
Maps available for inspection at the Minillas Governmental Center, De Diego Avenue, Stop 22, North Building, 13th Floor, San Juan, Puerto Rico.					
Send comments to Ms. Patria G. Custodio, Chairperson, Puerto Rico Planning Board, Minillas Governmental Center, North Building, De Diego Avenue, Stop 22, P.O. Box 41119, San Juan, Puerto Rico 00940–1119.					
South Dakota	City of Fort Pierre, Stanley County.	Bad River	Approximately 300 feet above mouth	*1,428	*1,431
			At U.S. Highway 83	*1,435	*1,439
			Just downstream of the second crossing of Chicago & Northwestern Railway, from the mouth going upstream.	*1,444	*1,445
			Approximately 800 feet upstream of Chicago & Northwestern Railway.	*1,447	*1,447
Maps are available for review at City Hall, City of Fort Pierre, 8 East Second Avenue, Fort Pierre, South Dakota.					
Send comments to The Honorable Jim Klemann, Mayor, City of Fort Pierre, 8 East Second Street, P.O. Box 700, Fort Pierre, South Dakota 57532.					
Texas	City of Freeport Brazoria County.	Velasco Drainage Area	At the crossing of Velasco Boulevard and Missouri Pacific Railroad.	None	*2
		North Freeport Drainage Area	At the intersection of Twelfth Street and Cedar Street.	None	*0
Maps are available for review at the City Hall, 128 East Fourth Street, Freeport, Texas.					
Send comments to The Honorable Allan R. Faulk, 128 East Fourth Street, Freeport, Texas 77541.					
Texas	Galveston County, Unincorporated Areas.	Gulf of Mexico	Gulf Shore Drive at Avenue G	*15	*16
			Approximately 500 feet southwest of intersection of Broadway Avenue and 7th Street.	*16	*17
			At intersection of 22nd Street and Broadway Avenue.	*16	*14
			At intersection of Boyt Road State Highway 87	*16	*15
Maps are available for inspection at the Galveston County Courthouse, 722 Moody, Galveston, Texas.					
Send comments to The Honorable Ray Holbrook, Galveston County Judge, 722 Moody, Galveston, Texas 77550					
Texas	Granbury, city, Hood County.	Stream LB–2	Approximately 80 feet upstream of U.S. Route 377.	None	*774

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 800 feet upstream of U.S. Route 377.	None	*775

Maps are available for inspection at the Granbury City Hall, 116 West Bridge Street, Granbury, Texas.

Send comments to The Honorable Rick Frye, Mayor of the City of Granbury, Hood County, 116 West Bridge Street, P.O. Box 969, Granbury, Texas 76048.

Washington	City of Wenatchee, Chelan County.	Dry Gulch	At the intersection of Oak Street and Splett Street.	None	#1
			500 feet south along Seneca Avenue from its intersection with Crawford Street.	None	#1

Maps are available for review at the City of Wenatchee, Department of Planning and Development, 25 North Worthen, Wenatchee, Washington.

Send comments to The Honorable Jim Lynch, Mayor, City of Wenatchee, 129 South Chelan, Wenatchee, Washington 98801.

*Elevations in Meters (Mean Sea Level).

(Catalog of Federal Domestic Assistance No. 83.100. Flood Insurance.)

Issued: February 19, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–4519 Filed 2–25–93; 8:45 am]

BILLING CODE 6718-03-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–19; Notice 1]

RIN 2127–AD50

Federal Motor Vehicle Safety Standards; Lift Systems for Accessible Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comments on a proposal to create a new safety standard specifying requirements for buses equipped with lift systems. The standard would specify minimum platform dimensions. To protect persons riding on the platform while it is in motion, the standard would set limits on the size of protrusions in the platform surface and gaps between the platform and either the bus floor or the ground. In addition, the standard would require platforms to have wheelchair retaining barriers or devices, handrails, and warning signals. Performance tests are proposed for the evaluation of lift strength, the ability of the lift to retain a wheelchair on its platform, and the slip resistance of the platform. A set of operational and interlock requirements are included to prevent accidental movement of the lift when someone is aboard. The standard is intended to prevent injuries and fatalities during lift operation.

DATES: Comments must be received by April 27, 1993. If adopted, the proposed amendment would become effective 12 months following the publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

The agency has assigned reference numbers to specific requests for comments. The agency requests that commenters refer to these numbers in their comments.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Neill, NRM–11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–5281.

SUPPLEMENTARY INFORMATION:

Background

Much of the impetus for this rulemaking proceeding comes from the Americans with Disabilities Act [ADA] of 1990 (Pub. L. 101–336, 42 U.S.C. 12101, *et seq.*), which the President signed into law on July 26, 1990. Title II of the ADA requires newly purchased or leased or remanufactured vehicles purchased by public entities and used in fixed route bus systems to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Title II also requires a public entity operating a demand responsive system to obtain accessible vehicles unless the system, when viewed in its entirety, provides to individuals with disabilities a level of service equivalent to that provided to individuals without disabilities. Title II further requires public entities operating a fixed route bus system (other than a system which provides solely commuter bus service) to provide complementary paratransit and other special transportation services to individuals with disabilities. Title III requires that designated public transportation, provided by private entities, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The Department of Transportation (DOT) is generally responsible for issuing regulations to implement the transportation vehicle provisions in titles II and III of the ADA. Section 504 of the ADA requires the Architectural and Transportation Barriers Compliance Board (the Access Board) to issue guidelines to assist DOT in establishing these regulations. On September 6, 1991, the Access Board published the final guidelines. These guidelines specify that, to be considered accessible, a vehicle must be equipped with a lift or other level change mechanism, and have sufficient clearance to permit a wheelchair to reach a wheelchair securement location once it is on the vehicle. If the vehicle is 22 feet or less in length, it must have at least one wheelchair securement location and device, and if the vehicle is more than 22 feet in length, it must have at least two securement locations and devices (56 FR 45530). On the same day, DOT published a final rule implementing the transportation provisions of the ADA. That final rule incorporates and requires compliance with the September 6, 1991 guidelines issued by the Access Board with only editorial changes (56 FR

45584). The Access Board's final guidelines and DOT's final rule will be referred to collectively as the ADA standards in this document.

NHTSA believes that it is important to supplement these actions under the ADA by reviewing and improving as appropriate the safety of the means provided for making vehicles accessible. Under the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (the Vehicle Safety Act), NHTSA establishes Federal motor vehicle safety standards to reduce motor vehicle crashes and the resulting deaths, injuries, and economic losses. NHTSA's authority under the Vehicle Safety Act extends to both motor vehicles and motor vehicle equipment. Therefore, NHTSA has the authority to regulate accessible vehicles, if there is a safety problem.

Safety Problem

To determine if there is a safety problem with the means provided for making vehicles accessible, NHTSA's National Center for Statistics and Analysis [NCSA] conducted a study to estimate the number of wheelchair users who are injured or killed in motor vehicle-related accidents other than those involving a collision between an occupied wheelchair and a motor vehicle. The Technical Note for this analysis has been placed in the docket for this rulemaking.

For purposes of this analysis, NCSA examined the Consumer Product Safety Commission's (CPSC) National Electronic Injury Surveillance System (NEISS) accident data for the 5-year period 1986–90. From the NEISS data base, NCSA was able to obtain information on wheelchair users who were nonfatally injured and subsequently treated in a hospital emergency center. The NCSA survey can be considered a conservative estimate of the number of injuries for two reasons. First, the NEISS data base sample does not include information on injured persons treated at smaller hospitals without emergency centers, emergency care centers not associated with a hospital, or doctors' offices. Second, in examining the NEISS data base, NCSA only included in the sample those cases that could be positively identified as being relevant to the analysis. NCSA excluded cases from the analysis if, due to missing or incomplete information, the injury could not be positively identified as resulting from malfunctioning lifts, improper wheelchair/occupant securement within the vehicle, falling off the vehicle ramp, or transferring to or from the vehicle in some manner.

The NCSA survey indicated that, of the estimated 3,774 wheelchair occupants injured in relevant types of accidents, 2 percent had serious injuries and required hospitalization, 16 percent had serious injuries and did not require hospitalization, 43 percent had moderate injuries, 34 percent had minor injuries, and 5 percent were released without treatment.

The NCSA survey shows further that malfunctioning hydraulic lift accidents accounted for 14 percent of the projected total number of wheelchair accident cases in this time period (521 cases out of 3,774). For these accidents, there were no seriously injured persons which required hospitalization. All of the wheelchair occupants which were injured were released without admittance to the hospital, and consisted of the following levels of injuries: 29 percent minor, 44 percent moderate, and 27 percent serious.

These malfunctioning lift accidents involved vans and buses. The accident scenario varies. In some cases, the lift malfunctioned and the lift itself fell. In other cases, it is not clear whether the lift malfunctioned, only that the person was injured on or by the lift in some manner.

NCSA also examined the CPSC's Death Certificate file for the period July 1973 to the present. This database revealed only 8 wheelchair fatalities due to motor vehicle-related accidents which met the criteria for this analysis. Because of the variability in state reporting from one year to the next, and variability in data collection from those states that do report, NCSA did not attempt to extrapolate these data to the national level. The sample included two fatalities involving a hydraulic lift. On November 2, 1981, a fatality occurred when the occupant fell down a wheelchair in a hydraulic lift while boarding a bus. On May 17, 1990, a fatality occurred when a wheelchair was pinned under the hydraulic lift of a van.

NHTSA's Office of Defects Investigation (ODI) has opened two investigations concerning possible defects in lifts. The first investigation involved an Environmental Equipment Corporation (EEC) lift when the platform stowed while a passenger was on the lift. The EEC lift is a stair-to-platform type lift. The bus stairs unfold to form the platform. Conversely, the platform folds to form stairs during the stow configuration. The person was thrown to the pavement, suffering injuries which proved fatal. As a result of this accident and investigation, EEC modified the lift to incorporate a load sensing device to prevent stowage of the lift when it is occupied. The second investigation involved a Braun Corporation lift which had a roll stop that was not functioning correctly. A person in a wheelchair fell off the lift, landing on a child standing near the lift. Both persons were injured and hospitalized. The cause of this accident was insufficient maintenance.

NHTSA expects that the implementation of the ADA will cause the number of accessible vehicles to increase, and that many of these vehicles will be equipped with lifts. In addition, as public and private transportation systems become more accessible, NHTSA expects that persons with disabilities will use public and private transportation systems in greater numbers and more frequently. Given that individuals in wheelchairs may be utilizing transportation systems to a higher degree in the future, NHTSA is concerned that the accident rate suggested by the NCSA study could increase. Therefore, NHTSA decided to propose a new safety standard specifying requirements for lift systems and for buses equipped with lift systems.

Other Standards

In developing this proposal, the agency examined a number of existing standards and guidelines for wheelchair lifts. These included the ADA standards, the set of advisory guidelines developed in 1986 under the sponsorship of the Federal Transit Administration (formerly the Urban Mass Transportation Administration) [the FTA-sponsored guidelines], the Department of Veteran Affairs (personal vehicles), the Eleventh National Conference on School Transportation (school buses), Indiana (school buses), Arizona (school buses), the Canadian Standards Association, the Swedish Board of Transport, and the British Code of Practice. Of these, the ADA standards and the FTA-sponsored guidelines had the greatest influence on the current proposal. The ADA standards, though not as comprehensive as other standards and guidelines, were influential because the largest number of accessible vehicles will be required to comply with them. The FTA-sponsored guidelines were influential because they reflect the then current state-of-the-art for lifts on the market.

The agency has incorporated many aspects of the ADA standards in its proposed standard because buses required to be accessible by the ADA are expected to comprise the largest number of vehicles equipped with lifts and therefore the largest number of vehicles affected by NHTSA's standard. While school buses outnumber transit and

paratransit buses, school buses are exempt from the ADA (although public school systems must comply with the accessibility requirements of section 504 of the Rehabilitation Act of 1973).

The FTA-sponsored guidelines were developed in 1986 as a result of an FTA project to develop a set of advisory guidelines for accessibility of transit buses and paratransit vehicles. The developmental work was performed by an advisory panel composed of lift and vehicle manufacturers, transit operators, state and local government officials, consumers with disabilities, wheelchair manufacturers, and Federal government agencies. The panel produced guidelines for two types of lift systems: Passive lifts and active lifts. (Passive lifts are devices which are normally located in doorways used by both persons with disabilities and those without disabilities, which, when stowed, allow unimpeded use of the door by persons without disabilities and which are typically installed on transit buses. Active lifts are normally located in doorways used only by persons with disabilities and are typically installed in paratransit vehicles, school buses and personally owned lift equipped vehicles.) The guidelines were intended to aid transit and paratransit agencies in preparing their specifications for vehicle accessibility. Both sets of guidelines are available in a single volume titled "National Workshop on Bus-Wheelchair Accessibility", FTA publication FTA–IT06–0322–87.

To a great extent, NHTSA's proposed standard was derived from the FTA-sponsored guidelines for passive lifts. Since the provisions of the FTA-sponsored guidelines were developed by consensus among all the parties, including lift manufacturers, the recommendations have generally been accepted and incorporated in designs by manufacturers. In addition, many provisions have been incorporated in bid specifications by some of the largest purchasers of accessible equipment, and, therefore, have been incorporated in designs to accommodate those large markets. Thus, where the proposed standard does not vary from the FTA-sponsored guidelines, the practicability of the requirement has been proven. In some cases, to provide harmony with the ADA standards, NHTSA has departed from the FTA-sponsored guidelines in developing its proposal.

Note: For comparison purposes, the discussion below of the proposed requirements includes citations for comparable sections of the ADA standards and the FTA-sponsored guidelines. If a citation is not included, the ADA standards or FTA-sponsored guidelines do not have a comparable requirement.

In addition, to satisfy the requirements of the Vehicle Safety Act, this proposal goes beyond the requirements of the FTA-sponsored guidelines in many areas. The FTA-sponsored guidelines were intended to be advisory in nature, providing transit agencies with a model that they could use, as appropriate, in the development of their specifications for accessible vehicles. In addition, the FTA-sponsored guidelines are general in nature and therefore would not be easily enforceable, even if adopted by a transit agency.

By contrast, if a manufacturer or NHTSA determines that its vehicles or items of motor vehicle equipment do not comply with a safety standard, the Vehicle Safety Act requires the agency to order the manufacturer to conduct a recall campaign and remedy the defect. In addition, the Vehicle Safety Act authorizes NHTSA to seek civil penalties or a restraining order against sales of noncomplying vehicles. Because of the potentially serious consequences of noncompliance with a safety standard, the Vehicle Safety Act requires each safety standard to meet certain requirements, including, among other things, that the standard be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

Issues

Applicability (S3)

NHTSA proposes to make this new standard applicable to all new buses equipped with a lift. While this proposal is based on standards developed for transit buses, the agency has also examined the existing school bus standards of Indiana, Arizona, and the Eleventh National Conference on School Transportation. Because of the similarity between these standards and NHTSA's proposal, the agency tentatively concludes that the proposed requirements would be appropriate for school buses also.

(1) The agency requests comments on the appropriateness of applying the proposed requirements to over-the-road buses, i.e., a bus with an elevated passenger deck located over a baggage compartment. The agency is aware that these buses will not be required to comply with the requirements of the ADA until July 26, 1996, at the earliest, if purchased by a private entity. However, over-the-road buses purchased by public entities must now comply with the requirements of the ADA. NHTSA does not anticipate that there would be any problems with applying the requirements to over-the-road buses equipped with lifts.

(2) The agency also requests comments on whether the proposed standard should apply to vehicles that would have been classified under the Vehicle Safety Act as buses (having a capacity to carry 11 persons or more) if equipped with regular seats, but which are instead classified as multipurpose passenger vehicles (MPV) (having a capacity of 10 persons or less) due to the installation of wheelchair restraints in place of regular seats.

Standard No. 222, *School Bus Passenger Seating and Crash Protection* specifies occupant protection requirements for school bus passenger seating which includes limits on the fore and aft spacing between adjacent rows of seats in order to keep students compartmentalized or contained within their immediate seating area during a crash. Because of these requirements, school buses generally have areas which are dedicated to wheelchair securement. Often, especially when a school bus is equipped with multiple wheelchair locations, the bus's carrying capacity can be lowered to the point that it is classified as an MPV. As an MPV, such a vehicle would not be subject to the proposed lift standard if it is limited to buses. For transit buses however, the agency believes that seats are designed to flip up or down to accommodate a wheelchair. In this situation, there is no reduction in capacity.

(3) The agency requests information about the types of vehicles (bus, school bus, or MPV) which are equipped with lifts.

(4) The agency requests comments on whether the proposed performance requirements for buses should be applied to MPVs as well.

Single Set of Requirements for All Vehicles Versus a Different Set for Each Type and Size of Vehicle and Lift

As stated previously, the advisory panel that developed the FTA-sponsored guidelines specified separate guidelines for passive and active lifts. The agency is proposing a single set of requirements, based primarily on the FTA-sponsored guidelines for passive lifts, for all buses. NHTSA has tentatively concluded that a distinction based on the type of lift is not necessary. When developing this proposal, NHTSA examined any areas where the FTA-sponsored guidelines differ for active and passive lifts. In general, the FTA-sponsored guidelines differed only in sections dealing with operational or maintenance issues. Since NHTSA safety standards regulate the

manufacture of motor vehicles and motor vehicle equipment only, these differences were not relevant to the current proposal. When NHTSA's proposal addresses an area where there are differences between active and passive lifts, the proposal either provides alternative means of compliance or has been modified so that either type of lift can comply. For example, in the requirements for the controls, the labeling requirement allows for different wording to reflect differences in the lift functions. (See *Control System.*) In the requirement for maximum lift acceleration, the agency tentatively chose a value with which either type of lift could comply. (See *Lift Operational Requirements.*) The agency also notes that the ADA standards generally do not make any distinction based on the type of lift.

(5) Nevertheless, the agency seeks comment on whether any of the requirements should be differentiated by type of lift.

(6) Even if a commenter believes that a general differentiation should not be made, comment is requested on whether there are any particular requirements which should include alternative provisions or exceptions for a specific type of lift.

Warning Signals (S5.1 and S5.2)

To warn persons in and near the vehicle that the lift is about to be deployed, the agency has tentatively concluded that buses should be equipped with an audible warning signal of 85 dBA that sounds for a period of not less than four seconds and not more than eight seconds, beginning when deployment of the lift begins. If this standard were to be generally extended to MPV's, the audible warning signal requirement might still apply only to buses. In vans and other personally licensed vehicles for transportation of persons with disabilities, the warning signal would be annoying and unnecessary because the lift would be operated by the vehicle owner in many cases.

The proposed sound level is identical to that recommended by the FTA-sponsored guideline (section 2.1.6.1) and was selected because it is the same as that frequently used for audible backup warning indicators on trucks. The level is high enough to be heard above normal background noise, yet still low enough that a person can be exposed to it for long periods of time without hearing damage.

Section 2.1.6.1 of the FTA-sponsored guideline recommends that there be a warning signal "(w)hen the lift is being deployed." In developing this proposal, the agency was concerned with balancing the safety need to warn persons near the vehicle that the lift was about to be deployed with the possible irrigation that extended operation of the signal could cause for passengers on the bus. The agency has tentatively concluded that the time period the signal is required to operate can be shortened without any decrease in the safety benefit the signal provides. The time span the agency is proposing is based upon the warning signal required by Standard No. 208, *Occupant Crash Protection,* for safety belts.

(7) The agency requests information from transit providers regarding accidents that have occurred to persons in the area of lift operation.

(8) The agency also requests comments on the length of time that the warning signal should operate.

To prevent noise caused by lift operation from obscuring the warning signal, and to allow oral instructions from the transit operator to be heard during lift operation, the agency has also tentatively concluded that the maximum noise level for the lift itself should be limited to 75 dBA. This proposal is identical to the FTA-sponsored guidelines (section 2.1.7).

In addition to the audible warning signal, the agency has tentatively concluded that the four-way flasher hazard lights should operate automatically during lift operation. Since lift operation can add to the time that a bus remains stationary at a bus stop, the visual signal would alert motorists that the bus will be stopped for longer than the usual period. This would let motorists behind the bus know that they should switch lanes and pass if it is safe to do so. This proposal is also identical to the FTA-sponsored guidelines (section 2.1.6.2).

This requirement would not apply to school buses. The agency notes that school buses have separate amber and red lights. The agency is concerned that operating the hazard lights in addition to these lights could confuse passing motorists.

Platform Size (S5.3.1)

Platform size, i.e., its length and width, determines the size of wheelchair which can be accommodated. The FTA-sponsored guidelines specify that "(t)he lift platform should have a minimum clear width of 28½ inches," "(t)he minimum clear length of the lift platform* * *should be 40 inches," and "(a)t a distance two and one half inches above the platform, the clear distance should be 44 inches" (section 2.2). The FTA-sponsored guidelines allowed a shorter length at the platform surface because the effective length of a wheelchair tends to be longer than the wheel "footprint" made by the wheelchair resting on the platform surface. Because the footrests and other parts of the wheelchair which extend beyond the "footprint" are higher up, the available clear space can be less at the platform level without decreasing the accessibility of the lift.

The dimensions in the FTA-sponsored guidelines were based on estimates that they would accommodate 90 to 95 percent of the wheelchair population in 1986. NHTSA believes that the percentage of wheelchairs which could actually use a lift of this size would now be lower for two reasons. First, these figures were for the entire fleet of wheelchairs, not just wheelchairs used in transport. The ones used in transport are typically of the larger type. Figures from the Access Board indicate that, while only 10 percent of all wheelchairs are of the powered type, powered wheelchairs represent 50 percent of the wheelchairs used in transport.

Second, the majority of three-wheeled scooters cannot be accommodated on lifts of the size specified in the FTA-sponsored guidelines. This inability had little significance several years ago, since scooters were then low volume sales devices commonly used for indoor transport. However, they have now become popular mobility devices and are being used widely for outdoor transport. The longest of these scooters are 44 to 48 inches in length at a height of three of six inches above the ground and could not be accommodated on a lift with the dimensions specified in the FTA-sponsored guidelines.

The ADA standards require "a minimum clear width of 28½ inches at the platform, a minimum clear width of 30 inches measured from two inches above the platform surface to 30 inches above the platform and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform" (36 CFR 1192.23(b)(6); 49 CFR 38.23(b)(6)). NHTSA has tentatively decided to include these dimensions in the new safety standard. However, the agency has tentatively concluded that the dimensions should be stated in terms of unobstructed platform operating volume. The proposal makes it clear that at no point while the lift is occupiable during its operation could any part of the lift or bus, except for any required barrier on a platform edge, intrude into the area above the portion of the platform that would be occupied by a large

wheelchair. This area is represented in the proposed regulation by a rectangular solid of specified dimensions. (See Illustration 1.)

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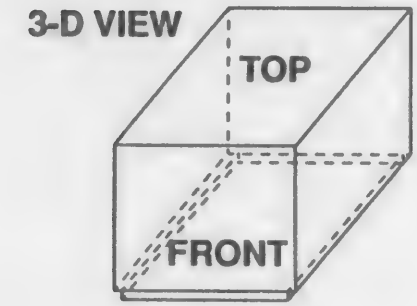
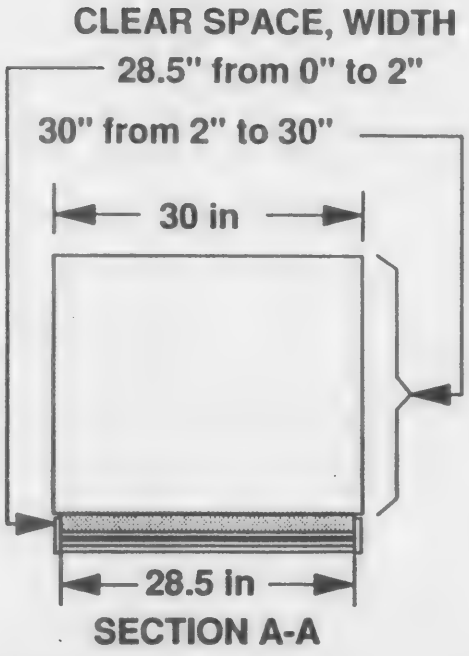
Illustration 1.
LIFT PLATFORM CLEA





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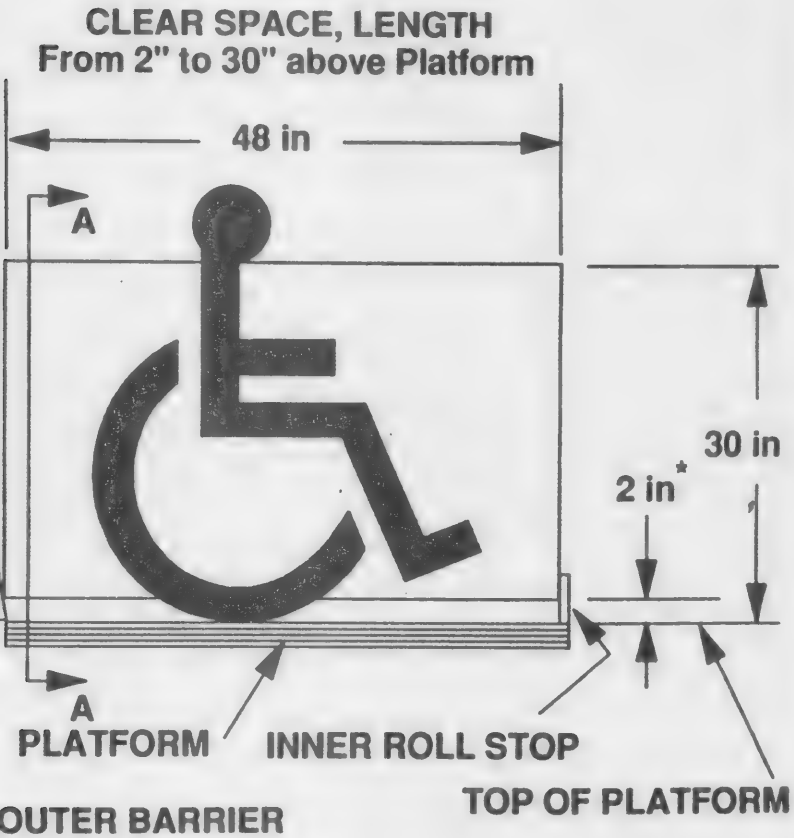
EAR SPACE REQUIREMENTS



SIDE VIEW

: No length clear space requirement in this zone.

Platform Slip Resistance (S5.3.2 and S6.2)

The agency tentatively concludes that a slip resistant platform surface is important to reduce the potential for accidents for both standees and wheelchair users. This potential occurs particularly as a result of rain or other precipitation, but is present even in dry weather. Both the FTA-sponsored guidelines (section 2.2.2) and the ADA standards (36 CFR 1192.23(b)(6); 49 CFR 38.23(b)(6)) specify that the platform surface should be slip resistant. Mobility-impaired persons who use lifts usually need a higher level of slip resistance for safe walking than an able-bodied person. In addition, they may have greater difficulty in regaining their balance and standing up again after a slip. In addition, a slip-resistant surface would provide the traction necessary for a person moving in a wheelchair from the bus floor to the lift platform to stop on the platform without hitting the outer barrier.

In the appendix to its final guideline, the Access Board recommended that lift platform surfaces have a static coefficient of friction of 0.6. This figure is based upon a research project of the Access Board which showed that a standee would need this level of coefficient of friction to be able to walk on the platform. The Access Board decided not to include a specific value in the guideline itself, however, based upon comments it received regarding the technical difficulties in using devices, e.g., the NBS-Brungraber Tester, to test the compliance of a surface with a specific value. (The NBS-Brungraber is a portable testing machine, weighing about 50 pounds, which is used to measure surface friction coefficient.) NHTSA tentatively agrees that, since standees will be using lifts, the platform surface should have a static coefficient of 0.6. However, instead of specifying the requirement in terms of coefficient of friction, thus necessitating the use of such a test device to determine compliance, the agency has tentatively concluded that it is more appropriate to use a surrogate requirement whose satisfaction by a platform surface would be equivalent to its compliance with this coefficient of friction.

Under the proposed slip resistance test, a wheelchair must remain on the platform when the vehicle or lift platform is tilted so that the lift platform has a 30 degree slope, and the platform is wet. The 30 degree value was derived from the 0.6 coefficient of friction in the manner described below. For a horizontal plane, static friction is determined by dividing the amount of tangential force required to move an object parallel to the plane by the normal force (force acting perpendicular to the plane). In the case of a horizontal plane, that force is equivalent to the object's weight. On an inclined plane, the force (gravity) acting on an object on the plane can be broken down into two components, one normal to and the other tangential to the surface of the inclined plane. As the angle of inclination increases, the normal force decreases and the tangential force increases. The interaction of these two components can be used to determine the plane's coefficient of static friction, i.e., the coefficient is equal to the tangential force divided by the normal force. A simple geometric function defines this relationship between tangential force, normal force, and the angle of the inclined plane. The tangent of the inclination of the plane is equal to the tangential force divided by the normal force which, in turn, is equal to the static coefficient of friction. Using this relationship, it is possible to determine an appropriate angle of inclination of the platform on which an object would not move if the static coefficient of friction was not less than 0.6. The inclination of the platform is the ARCTAN (0.6) or approximately 30 degrees. Thus, by tilting a surface to an inclination of 30 degrees, the surface becomes a surrogate pass/fail test for whether the surface has the desired coefficient of static friction of 0.6. A platform would pass the test if, with the platform tilted to 30 degrees, a wheelchair or other mobility aid on the platform remains at rest, or does not move far enough to contact the planes perpendicular to the lift platform at the platform perimeter. If it slides and contacts these planes, it fails the test. Therefore, the agency has tentatively concluded that the lift platform should be placed at a 30 degree outward slope for the purpose of conducting the compliance test. The agency has also tentatively concluded that, since a platform could be wet from precipitation, the platform should be wet when tested. The agency believes that it is not necessary to test for slip resistance with the platform dry, since a test with the platform wet should constitute a worst case scenario.

The agency is proposing that the test be conducted with each of three different types of wheelchairs both unloaded and loaded with 165 pounds with sand ballast. While research suggests that standees require a more slip resistant surface than a wheelchair, the agency is not proposing a test that attempts to replicate a standee on a platform surface. Developing an objective test using a standee would be very difficult. However, the agency believes that testing with wheelchairs would also ensure that the platform is sufficiently slip resistant for a standee to use the lift safely. The agency believes that most persons with a disability that limits their mobility wear rubber-soled shoes and that most crutches and walkers have rubber tips. Thus, the material in contact with the platform surface should be similar for both wheelchair users and standees. The agency is aware that an inclination angle of 30 degrees may be excessive for a bus, especially one with a rear mounted lift. Therefore, for this test, the agency would allow the necessary control arms to be removed between the bus and the lift to allow for the platform to be tilted separate from the bus.

(9) The agency requests comments on the merits of both the test proposed and other methods of measuring surface friction, such as testing using the NBS-Brungraber Tester which was evaluated by the Access Board in their research. (Kulakowski, B.T. et al. "Slip Resistant Surfaces Research Project," Vol. I, Tech. Rpt., The Pennsylvania Transportation Institute, The Pennsylvania State University, 1988.)

(10) The agency additionally requests comments on the qualitative value (static coefficient of friction = 0.6) from which our test requirement was established.

Platform Protrusions (S5.3.3)

In order to facilitate movement on and off the platform, the agency has tentatively concluded that the platform should be free from protrusions greater than 0.25 inch if the sides of the protrusion are perpendicular to the platform surface, or 0.5 inch if the sides of the protrusion are not perpendicular to the platform surface, with the maximum allowable slope for non-perpendicular sides being 1:2. (See Illustration 2.) If a protrusion is too high, a wheelchair user would have to accelerate to get over it. Even if the protrusion did not prevent a person in a wheelchair from entering or exiting a bus, the additional propulsive power needed to overcome the obstacle could result in an accident. Protrusions could also be a tripping hazard to any standees who use the lift.

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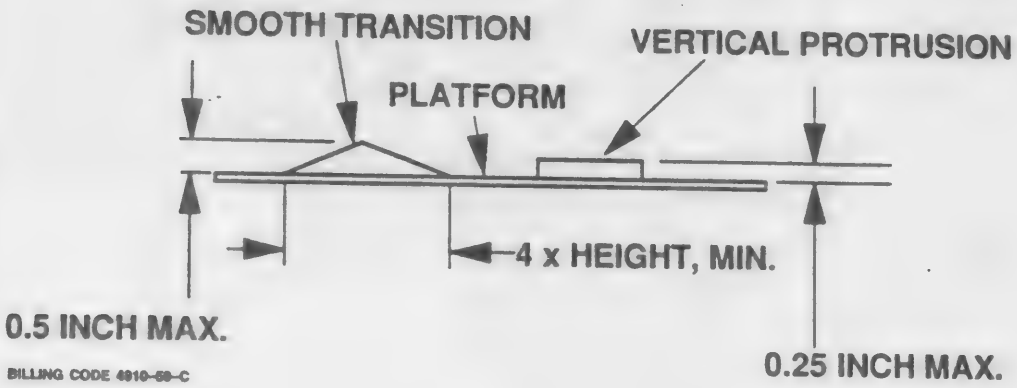
Illustration 2.

MAXIMUM PLATFORM PROTRUSIONS



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The agency also understands that the levers and/or devices which operate outer and/or inner barrier(s) often protrude through the platform surface when the barriers are deployed. The agency tentatively concludes that these protrusions should be allowed as they do not protrude through the platform surface while the wheelchair or standee is boarding or leaving the lift, and therefore do not constitute a hazard. Therefore, the agency is proposing language limiting the prohibition against protrusions to occasions when the lift barrier and roll stop are stowed.

The FTA-sponsored guidelines include an identical requirement (section 2.2.3). The ADA standards prohibit any protrusions greater than ¼ inch, with no distinction made between protrusions which are perpendicular to the platform surface and those which are not (36 CFR 1192.23(b)(6); 49 CFR 38.23(b)(6)). Since the ADA guidelines do not include a slope requirement, the agency believes that this prohibition applies only to vertical protrusions. The agency believes that slightly higher protrusions can be allowed for smooth rise without either compromising safety or decreasing the accessibility of the vehicle and that such a requirement would go beyond the ADA standards. The smooth rise requirement is intended to allow for some types of bolts, i.e., round head and oval head, which have sloped edges, to protrude through the platform surface.

(11) The agency requests comments on the practicability of the ADA standards requirements.

Static Load Tests. (S5.4, S6.3, S6.4, and S6.5)

Since the agency does not anticipate that the weight of wheelchairs will increase substantially in the future, the agency has tentatively concluded that the lift should be tested for compliance with the gap dimension and platform deflection requirements with a 600 pound load. (A discussion of both of these requirements follows this section.) This value was based on both the FTA-sponsored guidelines (section 2.3.1) and the ADA standards (36 CFR 1192.23(b)(1); 49 CFR 38.23(b)(1)). These standards specify a design load of 600 pounds, based upon typical loads that a lift would be carrying. Discussions with wheelchair manufacturers by the FTA sponsored advisory panel indicated that the heavier, powered wheelchairs can weigh up to 250 pounds, while heavy manual wheelchairs can weigh up to 60 pounds. The 99th percentile male weighs approximately 241 pounds. Thus, the weight of an occupied powered wheelchair could approach 490 pounds. The weight of an occupied manual wheelchair and attendant could approach 540 pounds. While the weight of an occupied powered wheelchair and attendant can approach 750 pounds, the agency does not believe that this is an appropriate test load. A powered wheelchair would occupy most of the platform, thus preventing a person from simultaneously standing on the lift. In addition, since a powered wheelchair provides independent movement, there is reduced need for a person riding in such a wheelchair on a lift to be accompanied by an attendant.

The agency is proposing a sequence of three static load tests which a life must pass. During the sequence of tests, the lift is operated only as specified in the standard. For the first test, a load of 600 pounds is placed on the lift when the lift is at the ground level loading position. The lift is then raised to the bus floor level loading position, then lowered to the ground level loading position. With this load on the lift, compliance with the gap dimension and platform deflection requirements is determined.

For the second test, a load of 1800 pounds is placed on the lift when the lift is at the bus floor level loading position. This test is not intended to simulate an actual load condition for the lift. Instead, this test is intended to be severe enough to ensure that the lift is unlikely to fail, even under an excessive load condition, without any separation, breakage, or fracture. This requirement is similar to the requirement in the FTA-sponsored guidelines (section 2.3.2) and the ADA standards (36 CFR 1192.23(b)(1); 49 CFR 38.23(b)(1)) that the lift have a structural safety factor of three.

After this test, the lift is again operated, this time without any load, through an entire cycle to determine that the lift continues to comply with the interlock and lift operational requirements. (See *Interlocks* and *Lift Operational Requirements.*) A load of 600 pounds is then placed on the lift and compliance with the gap dimension and platform deflection requirements is again determined.

Gap Dimensions (S5.3.4, S6.3, and S6.5)

The agency proposes to limit the horizontal and vertical gaps between the lift platform surface and the vehicle when the lift is at the vehicle floor level and gaps between the lift and the ground when the lift is at the ground level since gaps can impede the movement of the wheels of a wheelchair. As with protrusions on the platform surface, the additional propulsive power needed to overcome an overly large gap could result in an accident. The FTA-sponsored guidelines limit vertical gaps to ⅝ inch and horizontal gaps to ½ inch (section 2.2.4). The ADA standards limit vertical gaps to ⅝ inch and horizontal gaps to ½ inch (36 CFR 1192.23(b)(7); 49 CFR 38.23(b)(7)). The proposed standard is consistent with both. It specifies that vertical gaps are not to exceed 0.625 inches and horizontal gaps are not to exceed 0.5 inches.

The agency has added an additional provision that gaps would not be permitted to exceed these requirements when the platform is loaded as required for the first and third static load tests. (A discussion of the static load test precedes this section.) When the platform is loaded, platform deflection can potentially increase the gap dimension. This additional requirement would ensure that the platform gap does not exceed the specified dimensions at any time.

The ADA standards also include a requirement limiting the horizontal gaps between the lift platform and raised barriers to ⅝" (36 CFR 1192.23(b)(7); 49 CFR 38.23(b)(7)). This requirement is "intended to prevent the front castor of a wheelchair from turning sideways and dropping between the gap between the raised barrier and the platform." (56 FR 45530, 45536) The Access Board based this requirement on the fact that a wheelchair castor wheel width is approximately ⅝ inch. The agency has tentatively concluded that this provision should be adopted also.

Platform Deflection (S5.3.5, S6.3 and S6.5)

NHTSA proposes that the deflection of a lift platform under load be limited. Platform deflection negatively affects the lift user's sense of security and balance. For standees, a steep angle could make it very difficult to walk onto a lift. In addition, platform deflection could allow a wheelchair, especially manual wheelchairs, to be propelled towards the outer barrier, and possibly to gain sufficient momentum to pass over it. For this reason, the agency has tentatively concluded that platform deflection should be limited to 3 degrees. This is consistent with both the FTA-sponsored guidelines (sections 2.2.5 and 3.1.3) and the ADA standards (36 CFR 1192.23(b)(9); 49 CFR 38.23(b)(9)).

The agency believes that any additional platform deflection would be unsafe. When climbing an incline, the occupant of a manual wheelchair must increase the amount of force being applied to the wheels to make the

wheelchair move. When descending an incline, the wheelchair will accelerate, making it necessary for the occupant to apply a resistive force to maintain a cautious speed. Therefore, the agency believes that platform deflection should be limited to an angle that ensures that excessive arm strength will not be necessary in order for a wheelchair occupant to maneuver onto and off the platform.

The test requirement is based upon both the FTA-sponsored guidelines (section 3.1.3) and the ADA standards (36 CFR 1192.23(b)(9); 49 CFR 38.23(b)(9)). The test pallet (a platform on which the load is placed) would measure 26 inches by 26 inches, the dimensions of the average wheelchair "footprint." With the platform unloaded, platform deflection is measured. Then the platform is loaded with 600 pounds and platform deflection is again measured. The difference between these two measurements cannot be greater than 3 degrees. The agency has modified the test requirement found in the FTA-sponsored guidelines and the ADA standards by specifying that deflection is measured in relation to a plane tangent to the side of the vehicle on which the lift is attached.

Edge Guards (S5.3.6)

The agency has tentatively concluded that the sides of the platform which parallel the direction that a wheelchair would travel during entry or exit should be required to be equipped with edge guards. Edge guards can help prevent a wheelchair from sliding off or being driven off the side of the platform. The edge guards would not be required along the sides of any portion of the platform that never extends outside the vehicle. This will facilitate maneuvering the wheelchair into or out of the vehicle. Edge guards are required by both the FTA-sponsored guidelines (section 2.2.6.1) and the ADA standards (36 CFR 1192.23(b)(5); 49 CFR 38.23(b)(5)). The sides of the platform are not in the direct path of the wheelchair, and would be subject to only a small fraction of the weight of the occupied wheelchair. Therefore, the agency tentatively concludes that it would be sufficient to require only that the edge be high enough to deflect the motion of the wheelchair and alert the wheelchair occupant that the wheelchair is at the edge of the platform. NHTSA believes that it would be sufficient for this purpose if the edge guards were one and one-half inches high. This height is the same as that in the ADA standards and is greater than that required by the FTA-sponsored guidelines.

Platform Inner Roll Stop (S5.3.8 and S6.7)

The inner roll stop prevents the wheelchair from rolling off the platform's inner edge. For arc lifts, i.e., lifts which have an arcing motion during operation, this device prevents the lift occupant from falling off the inner edge. For all lifts, it prevents accidents due to pinching and shearing of the occupant's legs or feet between the platform and the bus. For elevator lifts, i.e., lifts which move vertically during operation, it is possible for the bus wall below the wheelchair lift entry door to perform the function of the inner roll stop. Either design is permissible under the proposed standard, as it is under both the FTA-sponsored guidelines (sections 2.2.6.4 and 2.2.6.5) and the ADA standards (36 CFR 1192.23(b)(5); 49 CFR 38.23(b)(5)).

Since the agency does not have any information that there have been any accidents involving a failure of the inner roll stop to retain a wheelchair on the platform, and since the possible accident scenarios appear to involve less risk of serious injury than if a wheelchair were to fall off the outer edge of the platform, the agency has tentatively concluded that a static test is sufficient for this device. The proposed inner roll stop test is based on the FTA-sponsored guidelines (section 3.1.6.2), modified by specifying the length of time that the load is applied and the amount of permissible deflection.

Wheelchair Retention (S5.3.7 and S6.6)

The FTA-sponsored guidelines (section 2.2.6.2) require an outer barrier. The ADA standards state that the outer barrier "shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it . . ." (36 CFR 1192.23(b)(5); 49 CFR 38.23(b)(5)) In addition, the ADA standards require the outer barrier to move into position automatically, or the supplementary system to engage, whenever the platform is more than 3 inches above the ground.

Because a wheelchair falling off a platform could drop as far as three feet, there is a potential for severe injuries. Therefore, the agency tentatively concludes that there should be a requirement for a device that retains a wheelchair on the platform. In the past, lifts have been equipped with an outer barrier for this purpose. However, the agency understands that other types of systems similar to the restraints used inside the bus are being developed. To allow for development of this, or any other type of system, the agency is requiring "a means of retaining a wheelchair." The agency has also modified the test procedure so that it is performance related.

The FTA-sponsored guideline for passive lifts requires the outer barrier to meet dynamic test requirements intended to ensure that the outer barrier will retain a powered wheelchair. (sections 2.2.6.3 and 3.1.6.1) The dynamic test in section 3.1.6.1 specifies that the outer barrier cannot be defeated when 2 of 4 named wheelchairs are tested under the following conditions:

(a) Fully charged battery system

(b) Equivalent occupant loads of both 110 and 250 pounds

(c) Accelerated at full power from a starting position off the lift platform and a minimum of 48 inches between the front edge of the foot rests or rim of the rear tires and the outer barrier

(d) A platform positioned with an 8 degree outward slope

(e) The lift platform in a raised position.

The FTA-sponsored guidelines included a dynamic test requirement based upon the results of testing done in 1985 by Garrett Engineers, Inc., a California sponsored contractor.

These tests were initiated by the Southern California Rapid Transit District following an accident investigation that indicated a powered wheelchair had defeated an outer barrier. The tests showed that outer barriers on all then-existing passive wheelchair lifts could be overcome by commonly available powered wheelchairs, which either rode over the outer barrier or pushed them down.

NHTSA tentatively agrees with the statement in the supporting rationale for the FTA-sponsored guideline that "the unsafe condition of an outer barrier not retaining a wheelchair on the platform is unacceptable." Therefore, the agency has included a dynamic test in the proposed standard.

After reviewing the test vehicles, NHTSA has tentatively concluded that the number of tests specified in the FTA-sponsored guidelines can be reduced by specifying testing with only one wheelchair. The FTA-sponsored guidelines require testing with two types of wheelchairs, the power base chair and the large-rear-wheeled chair. The agency believes that the Invacare Ranger 2 (a large-rear-wheeled chair) can simulate both of these test conditions. The agency believes that the worst case crash is an outer barrier impact with a large-rear-wheeled wheelchair during the rear facing test, as

the chair will tend to climb over the outer barrier. The agency believes that, during the front facing test, the front wheels of the test wheelchair will impact the barrier in a manner similar to that of the power base chair, thus making the front-facing test with the large rear wheeled wheelchair a surrogate for the power base wheelchair. Therefore, the agency believes the number of compliance tests can be reduced while continuing to ensure the safety of the lift.

While the FTA-sponsored guidelines did not specify testing with a three-wheeled "scooter," the agency believes that the proposed test would adequately demonstrate whether this type of wheelchair would also be retained on the platform. Typical three-wheeled "scooters" have wheels that are approximately the size of those used on power base chairs. However, "scooters" typically are lighter and less powerful than the power base chairs. Therefore, the agency believes that a "scooter" would be less able to push down a barrier than a power base chair.

While reviewing the wheelchair types used in this test, NHTSA also considered adopting a surrogate test device for testing the outer barrier. However, a suitable surrogate wheelchair is not currently available. The surrogate used by Australia is mounted on skids, not wheels. While Britain and Canada are developing a surrogate on wheels, the surrogate only has small wheels and is not powered, and therefore could not be used to simulate a rear-facing crash by the large-rear-wheeled chair which would tend to climb over the barrier.

The agency is specifying one permissible wheelchair for this test, rather than specifying a generic type of wheelchair. The Vehicle Safety Act's requirement that safety standards be objective requires the agency to ensure that test results are equivalent. The agency believes that the proposed slip resistance test (S6.2), which specifies generic wheelchair types will be sufficiently objective since the characteristics of the wheelchair which affect the outcome of that test are limited to the tires and overall weight. However, the agency believes that such a wide variety of wheelchair characteristics affect the outcome of a dynamic wheelchair retention test that it is necessary to designate one specific model of wheelchair for that test. The basic design of the electric wheelchair which the agency is proposing be used for this test has not changed since the mid-sixties. Therefore, the agency does not anticipate any need to amend the standard in the near future because of design changes in this wheelchair.

The agency is proposing that test loads of 104 and 225 pounds be secured in the wheelchair for the retention test. These loads correspond with the weights of 5th percentile females and 95th percentile males, respectively. With a lighter load, the wheelchair would be more likely to climb or bounce over the barrier. With a heavier load, the wheelchair would be more likely to power through the barrier. Because this standard would apply to school buses, the agency has considered lowering the lower weight the test will be performed with, possibly even to test with loads of zero and 225 pounds.

(12) The agency requests comments on this option.

The agency tentatively concludes that the load should consist of ballast rather than test dummies. Since no occupant dynamics are being measured, the agency believes the cost of using dummies would not be justified. The proposed ballast consists of a box structure capable of being restrained in the wheelchair seat, with sufficient capacity to hold up to 225 pounds of sand (approximately 2.5 cubic feet). The box's base would be approximately 12 to 18 inches square and would rest on the wheelchair seat. When loaded with the approximate amount of sand, the box's center of gravity height (above the seat surface) would be 9 to 10 inches for the 104 pound test and 12 to 13 inches for the 225 pound test. These heights correspond to the center of volume height location above the surface of the seat for the 5th percentile female (9¼ inches) and the 95th percentile male (12¼ inches).

NHTSA also believes there should be one other change made to the dynamic test in the FTA-sponsored guidelines. The guidelines specify a test impact velocity in terms of an acceleration zone of 48 inches over which the wheelchair would be accelerated at full power until impact. After further review, NHTSA believes this is not sufficiently objective, and therefore, the agency is proposing to change the procedure by specifying an impact velocity of 4 mph. The wheelchair is to achieve this impact velocity under its own power, not by an external propulsion, i.e., by being towed or by a hydraulic ram. The agency believes this is a more appropriate measure for dynamic impact testing because it simulates the real-world situation.

The agency is considering a pass/fail criteria based on retention of the wheelchair (test vehicle) on the platform with the wheelchair upright and resting on its wheels. The test for this requirement is conducted with the lift at the bus floor level loading position Since this is a dynamic test, a possibility exists that the wheelchair could bounce back into the vehicle, while maintaining its upright position. The agency believes this would be a safe outcome and has allowed for this outcome in the requirements for the retention device.

(13) The agency requests comments on the merits of a dynamic test versus a static test as proposed in the FTA-sponsored guidelines for active lifts, section 3.1.6.2, Option B. Additionally, the agency requests comments on how this static test could be applied to retention systems which do not make use of an outer barrier.

(14) In addition, the agency requests comments on the agency's proposed changes to the FTA-sponsored guidelines' dynamic test.

Handrails (S5.3,9 and S6.8)

NHTSA is proposing to require lifts to have movable handrails. Handrails are necessary for passengers to assist themselves in moving into and off of the platform. They also provide a sense of security to standees during lift operation and help prevent lateral movement of wheelchairs. Current lift designs use either stationary (i.e., fixed in relation to the bus) or movable (i.e., that move with the lift platform) handrails. The FTA-sponsored guidelines (section 2.2.7) require movable handrails for arc lifts, and permit either movable or stationary handrails for elevator lifts. While stationary handrails currently in use have not been reported to be a major problem, movable handrails are easier to grasp and therefore, provide a greater sense of security to standees. For this reason, the ADA standards require movable handrails for all lifts (36 CFR 1192.23(b)(13); 49 CFR 38.23(b)(13)).

(15) While the agency's proposed requirement is taken from the ADA standards, the agency requests comments on the availability of movable handrails for elevator lifts.

(16) The agency also requests comments regarding the relative safety benefits of movable and stationary handrails.

The agency is proposing to require handrails having the same dimensions as those specified in the ADA standards, which are also very similar to those in the FTA-sponsored guidelines, except for height. The height dimensions in the ADA standards are based on the most recent research on the height of a handrail which can be used by persons with a disability. For this reason, the agency believes that these ADA height dimensions are the most appropriate.

The agency notes that the final ADA standards removed a reference in the Access Board's NPRM to the diagonal or horizontal when measuring the length of a handrail. The ADA standards require "a usable component at least 8 inches long with the lowest portion a minimum 30 inches above the platform and the highest portion a maximum 38 inches above the platform." This language appears to allow a vertical handrail. NHTSA is concerned that such a handrail would offer less support and would be less usable when entering and exiting the lift. The agency has tentatively concluded that the handrails should have a length of at least 8 inches measured horizontally. While this would allow non-horizontal handrails, the handrail would still have to cover a horizontal distance of 8 inches.

(17) The agency requests comments on the change the Access Board made in its final rule regarding measuring the length of a handrail.

The retention test requirement is the same as that included in both of these guidelines, except that the agency is proposing to specify the time the load will be applied and the amount of permissible displacement, either permanent or elastic. This requirement would increase the sense of stability provided by the handrails and ensure that sufficient space is maintained between the handrail and other portions of the vehicle or lift to protect fingers and hands.

(18) The agency requests comments on whether the handrails of some lifts are on adjacent sides instead of opposite sides.

Platform Markings (S5.3.10)

NHTSA is proposing platform markings to provide greater visibility for the edges of the lift and therefore reduce the potential for accidents. For standees, it is also desirable to mark the safest area for them to stand. The proposal requires that the lift platform be marked with a continuous stripe around the perimeter of the platform, the bus floor be marked along the edge where the platform is boarded, and the standing area be marked by right and left footprints. These requirements are based on the FTA-sponsored guidelines (section 2.2.9).

(19) The agency requests comments on whether the degree of contrast for these markings should be specified.

The agency has examined two alternate methods of designating the amount of contrast required. First, one would be to require that the lift be marked with a contrasting color or shade observable with the unaided eye from 10 feet. Second, to require that the lift be marked with a contrasting color or shade with at least 70 percent contrast, defined as follows:

Contrast=100* ((L1–L2)/L1)

where:

L1=luminance in footlamberts of the lighter color or shade, and

L2=luminance in footlamberts of the darker color or shade.

Platform Free Fall Velocity Limits (S5.5)

To prevent accidents from sudden impacts with the ground, should a free fall occur, the agency has tentatively concluded that the free fall velocity of the lift platform should be limited to 12 inches per second (twice allowable velocity limit). This requirement is included in both the FTA-sponsored guidelines (section 2.4.2) and the ADA standards (36 CFR 1192.23(b)(4); 49 CFR 38.23(b)(4)).

Control Systems (S5.6)

Designing control systems to reduce the possibility of operator error can increase the safety of the lift. Several factors contribute to lift operator error: Infrequent use of the lift; variations in the controls for different lifts; and lack of training. Therefore, one means to reduce operator error is to make lift control systems standard and simple to use. The agency is proposing requirements to accomplish this.

First, the lift operation would have to be controlled by three switches: The power switch; the function selection switch; and the operating switch. The power switch must be "on" in order to operate the function selection and operating switches. This switch can also act as a back-up, emergency "off" switch. The function selection switch must be used for selecting one of the various functions of the lift and preventing operation of more than one function at a time. The operating switch would allow the lift to perform the selected function. For safety reasons, this switch must be continuously pressed for the function to be performed. Thus the only required operation to stop the lift is release of this switch.

The proposed standard is based on section 2.5 of the FTA-sponsored guidelines. The ADA standards only contain one requirement for the controls; i.e., each control must be of the type requiring continuous force in order to operate (36 CFR 1192.23(b)(2); 49 CFR 38.23(b)(2)). While the function selection switches in the proposed standard are not required to be of the continuous force type, the operating switch which activates these switches is. The agency believes that, therefore, the proposed standard is consistent with the ADA standards.

The agency believes that other aspects of the proposed standard would also make controls standard and simpler to use, thus reducing the possibility of operator error. These provisions include ones requiring simple instructions, positioning switches to prevent simultaneous one-handed operation of more than one switch, mandating a specified sequencing of function switches, specifying terms used to designate functions, and positioning the control box so the operator has a clear view of the lift.

The agency is concerned that the specification of the exact labeling of each of the three operational switches may be too restrictive. Different manufacturers may use different systems to perform these functions safely, without using the established procedures formulated by the FTA-sponsored guidelines.

(20) NHTSA requests specific comment on its proposal for the types of operation switches and the specification of the positions of these switches.

(21) NHTSA also requests comment on the compatibility of existing controls with the proposal, and also on the compatibility of current control systems with the intent of the proposal.

(22) Additionally, NHTSA requests comments on any human factors research which has been performed by the manufacturers of these control consoles in determining the design of these devices.

Jacking Prevention (S5.7)

NHTSA is proposing to require that lifts be designed to prevent jacking, i.e., the raising of a bus as a result of the lift being lowered. Because of the stress that this could place on the lift, jacking can damage the lift, and result in an unsafe condition for subsequent lift riders. This proposal would not prohibit the release of the load from the bus when the occupied platform contacts the ground, often mistakenly referred to as jacking. Such release results only in a shifting of the suspension system and does not actually raise the bus. Therefore, it is not harmful to the lift. This requirement is adopted from section 2.5.6 of the FTA-sponsored guidelines.

Manual Operation (S5.8)

It is proposed that buses with lifts be equipped with a manual backup system to permit operation of the lift in the event that powered means of operation fails as a result of an accident or a vehicle component failure. To permit the removal of passengers, the manual

system would have to be able to lower and raise the lift. For the passenger's safety, the outer barrier and inner roll stop also would be required to be operable manually. In addition, the manual system should be able to stow the lift so the vehicle can be moved.

These requirements are based on the FTA-sponsored guideline (section 2.5.7). The ADA standards requires "an emergency method" of operation, which can be manual or otherwise (36 CFR 1192.23(b)(3); 49 CFR 38.23(b)(3)).

(23) The agency requests comments regarding other methods of operation in case of power failure, either currently in production or possible in the future, to determine whether NHTSA's adoption of the broader language of the ADA standards would be appropriate.

(24) The agency also requests comments on whether the agency should include a requirement for the maximum strength needed to operate the manual system. The agency is concerned that such a requirement might be necessary to increase the probability that anyone, including children and small adults, would be physically able to operate the system in an emergency if the bus driver were not available.

Interlocks (S5.9)

The agency is proposing that interlocks be required to operate in five different situations. Interlocks are electrical or mechanical devices which prevent the operation of a device until a particular event has occurred. Their use in lift systems is to prevent injury due to mechanical or human error. The first interlock would prevent vehicle movement when a passenger is on a lift or when the lift extends beyond the normal width of the vehicle. The second interlock would prevent lift movement unless the vehicle is appropriately inhibited from moving and the lift can be deployed through an open door. These interlocks would reduce a possible hazard for the passenger and reduce damage to the lift or vehicle.

Another possible hazard is failure of the wheelchair retention device or inner roll stop. To prevent this, the third interlock would prevent the lift from being able to move higher than three inches above the ground or down unless the wheelchair retention device and the inner roll stop are deployed. A fourth interlock would prevent the outer barrier from lowering its deployed position unless the lift is within three inches of the ground level or on a surface that allows safe boarding and unloading.

(25) The agency requests comments on whether an additional interlock preventing the inner roll stop from being lowered unless the platform is at the vehicle loading level should be required.

Finally, NHTSA's ODI has investigated one accident which allegedly resulted from a lift being moved into the stowed position while a passenger was still on the lift. Therefore, the agency is proposing a fifth interlock, one that would prevent stowage of the lift when the platform is occupied.

These requirements are based on section 2.5.8 of the FTA-sponsored guidelines. The first three interlocks are also specified in the ADA standards (36 CFR 1192.23 (b)(2) and (b)(5); 49 CFR 38.23 (b)(2) and (b)(5)).

The agency notes that there is one type of lift, a rotary lift, whose stowed position is the same as the vehicle floor level loading position. For this type of lift, the agency would interpret the raising and rotating of the lift into the vehicle as the "raise" function and not the "stow" function.

(26) The agency requests comment on the operation of the interlocks during the manual operation of the lift functions.

Lift Operational Requirements (S5.10)

Like most existing lift guidelines, this proposal includes provisions limiting maximum speeds and operating times for the safety of lift users, especially standees. The FTA-sponsored guidelines specify a maximum speed of 6 inches per second and a maximum acceleration of 0.2 g (section 2.5.11). (The FTA-sponsored guideline for active lifts specifies a maximum acceleration of 0.3 g (section 2.5.10).) The ADA standards specify a maximum speed of 6 inches per second when occupied, a maximum speed of 12 inches per second when the lift is being deployed or stowed, and maximum acceleration of 0.3 g (36 CFR 1192.23(b)(10); 49 CFR 38.23(b)(10)). The agency tentatively agrees with the Access Board that the slower speed limit need apply only during those portions of a lift cycle when the platform might be occupied. For the safety of persons in or near the bus when the lift is being deployed, however, a maximum speed limit appears to be necessary at all times. For this reason, the agency has tentatively concluded that the maximum speed limits included in the ADA standards are appropriate. The agency is also proposing the maximum acceleration limit included in the ADA standards

Additional Questions

Protective Covering

The FTA-sponsored guidelines require potential hazardous areas to be covered or protected (section 2.1.8). While the agency believes that such a requirement may be desirable, the requirement would not, without greater detail, satisfy the Vehicle Safety Act's requirement that safety standards be objective.

(27) The agency requests comments on how the requirement could be made sufficiently objective and on the ways that manufacturers are protecting potentially hazardous areas. The agency is concerned about pinching and shearing by the lift system and the possibility of a standee's head impacting the doorway.

(28) The agency also requests any data on accidents caused by users getting caught in the moving parts of lifts.

Platform Lighting

The FTA-sponsored guidelines require a minimum of one foot-candle of illumination on the platform when the lift is operated (section 2.2.8). The ADA standards requires a minimum of two foot-candles of illumination in the stepwell or on the lift platform, and one foot-candle for a distance of three feet from "all points on the bottom step tread outer edge" (36 CFR 1192.31; 49 CFR 38.31). The agency has not included a lighting requirement in the proposed regulatory text. While lighting is an important safety feature at night time or during times of low ambient light, the agency believes that this may be one area that does not need to be covered by both the ADA standards and a safety standard. Any bus required to be accessible by the ADA will have illumination for the lift. The agency believes that the only lift-equipped vehicles which will not be subject to the ADA are school buses.

(29) Because school buses are not frequently operated at night, the agency requests comments on the need to include a lighting requirement similar to the ADA standards.

Platform Seating

While not requiring seating for non-wheelchair users on lifts, the FTA-sponsored guidelines include specifications for seating if it is provided (section 2.2.10).

(30) The agency does not believe that seating is being provided on lifts currently being installed on a widespread basis and requests comments on the necessity of such a requirement.

Standing Area

A designated standing area was permitted under the FTA-sponsored guidelines (section 2.2.9.2) and is required by the ADA standards (36 CFR

1192.23(b)(12); 49 CFR 38.23(b)(12)). The agency agrees that, since standees are allowed on the lift while it is operating, designating the area on the lift which has adequate headroom and clearance for holding handle bars is desirable. However, such a requirement would not, without greater detail, satisfy the Vehicle Safety Act's requirement that safety standards be objective.

(31) The agency requests comments on whether a specific standee area on a lift should be specified in the requirements and comments on how the requirements could otherwise be made sufficiently objective.

(32) The agency also requests comment on whether standees are allowed on lifts other than buses which are required to be accessible by the ADA.

Miscellaneous

For the convenience of comparing this proposed rule to other regulations, this notice uses U.S. units of weights and measurements. However, pursuant to E.O. 12770 (56 FR 35801; July 29, 1991), the agency is in the process of converting all safety standards to metric units. Therefore, metric equivalents, rounded to the nearest whole unit, would be used in any final rule issued as a result of this notice.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291. It is however, "significant" within the meaning of the Department of Transportation's regulatory policies and procedures because of the public interest in the subject of this proposed rulemaking action. Accordingly, a Preliminary Regulatory Evaluation (PRE) has been prepared for this proposal. A copy of that document has been placed in the public docket for this rulemaking action. A copy of the PRE may be obtained by writing to: Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590.

Because this proposal is based on existing lift guidelines, the agency believes that most lifts on the market already meet most of the proposed requirements. The agency expects that the additional modifications necessary to comply with the proposed requirements would be approximately $100 per lift for transit and paratransit buses and $75 per lift for school buses. The agency also estimates that the average compliance certification cost per lift for all types of buses will be approximately $23. The agency estimates that approximately 7,000 to 9,000 lift equipped buses will be sold annually (3,000 to 4,000 transit buses; 950 to 1,250 paratransit buses; and 2,950 school buses). Based upon these estimates, the agency expects that the total annual costs of this proposed standard would be $773,000 to $934,000.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. This analysis appears in the PRE. Based on the available information, I certify that this proposal would not have a significant impact on a substantial number of small entities.

The Regulatory Flexibility Act requires each agency to evaluate the potential effects of a proposed rule on small businesses (SB), small organizations (SO), and small governmental jurisdictions (SGJ). The groups most likely to be affected by the subject rulemaking are:

(1) Transit, paratransit, intercity, and school bus manufacturers (SB);

(2) wheelchair lift manufacturers (SB);

(3) public/private transit and paratransit bus owners and operators (SO/SB);

(4) public/private school bus operators (SB/SO/SGJ);

(5) school bus manufacturers (SB).

The agency believes that some of the paratransit and school bus manufacturers are small businesses. The agency also believes that most of the lift manufacturers are small businesses. The agency believes that the remainder of the affected manufacturers are not small businesses. Finally, the agency believes that many of the bus owners and operators are small businesses.

However, as explained above, the agency does not expect the effects of the proposed rulemaking to be significant. Interested persons are invited to examine this section of the PRE.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has tentatively determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. The agency also requests that commenters included the reference number for questions the agency has asked when responding to them.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments

received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended to add a new safety standard 571.401, "Lift Systems for Accessible Transportation," as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407. delegation of authority at 49 CFR 1.50.

2. Section 571.401 is added to read as follows:

§ 571.401 Standard No. 401; Lift systems for accessible transportation.

S1. *Scope.* This standard specifies requirements for vehicles equipped with a lift.

S2. *Purpose.* The purpose of this standard is to prevent injuries and fatalities during the operation of lifts installed in vehicles.

S3. *Application.* This standard applies to buses.

S4. *Definitions.*

Cycle means deploying the lift from a stowed position, lowering the lift to the ground level loading position, raising the lift to the vehicle floor level loading position, and stowing the lift; including operation of any wheelchair retention device and inner roll stop.

Deploy means, with respect to a lift, its movement from a stowed position to a loading position; and, with respect to a wheelchair retention device or inner roll stop, its movement to a raised and locked position.

Lift means a hydraulic or electro-mechanic level change device used to assist those with limited mobility in entering or leaving a vehicle.

Loading position means a position at which a wheelchair can either board or disembark from a lift.

Platform surface means the load carrying surface of the lift platform.

Range of passenger operation means that portion of the lift cycle when the lift is moving from the ground level loading position to the vehicle floor level loading position, or from the vehicle floor level loading position to the ground level loading position.

Stow means, with respect to a lift, its movement from a loading position to a stowed position; and, with respect to a wheelchair retention device or inner roll stop, its movement from the raised and locked position.

Test Pallet means a platform on which required test loads are placed for handling and moving.

Wheelchair means a wheeled seat frame for the support and conveyance of a person with physical disabilities, comprised of at least a frame, seat, and wheels.

S5 *Requirements.* Each vehicle equipped with a lift shall meet the requirements in this section when it is tested in accordance with S6.

S5.1 *Warning signals.*

S5.1.1 When the lift begins to deploy, a continuous audible warning signal of not less than 85 dBA shall sound for a period of not less than 4 seconds and not more than 8 seconds as measured 5 feet from the lift along a line perpendicular to a longitudinal vertical plane tangent to the outer edge of the lift platform when it is at the ground level loading position.

S5.1.2 In vehicles other than school buses, the four-way, warning hazard lights required by Standard No. 108 (49 CFR 571.108) shall operate automatically throughout the lift cycle.

S5.2 *Maximum noise level.* Except as provided in S5.1, the noise level of the lift shall not exceed 75 dBA as measured anywhere within the vehicle or the area on the lift defined in S5.3.1.

S5.3 *Platform.*

S5.3.1 *Unobstructed platform operating volume.*

S5.3.1.1 Expect as provided in S5.3.3, throughout the range of passenger operation, no portion of the lift shall intersect a rectangular solid whose base is 28.5 inches wide by the length of the platform surface, whose height is 2 inches, and which is resting on the platform surface with each side of the base parallel with the nearest side of the platform surface.

S5.3.1.2 Throughout the range of passenger operation, no portion of the lift shall intersect a rectangular solid whose base is 30 inches by 48 inches, whose height is 28 inches, whose base is tangent to the top surface of the rectangular solid described in S5.3.1.1, and whose vertical axis coincides with that of the lower rectangular solid.

S5.3.2 *Platform slip resistance.* When tested in accordance with S6.2, a test vehicle shall remain on the platform for 2 minutes without contacting the planes perpendicular to the lift platform surface at its perimeter.

S5.3.3 *Protrusions.*

S5.3.3.1 Except as provided in S5.3.3.2, when the wheelchair retention device and inner roll stop are deployed, the platform surface shall have no protrusions which rise more than 0.25 inches above the platform surface, measured perpendicular to the plane of the platform surface.

5.3.3.2 If the outboard and inboard sides of a protrusion are nonvertical and have a slope not greater than 1:2, the protrusion shall not rise more than 0.5 inches above the platform surface, measured perpendicular to the plane of the platform surface.

S5.3.4 *Gap dimensions.*

S5.3.4.1 When tested in accordance with S6.3 and S6.5, the lift shall meet the requirements of sections S5.3.4.2 through S5.3.4.5.

S5.3.4.2 When tested in accordance with S6.3 and S6.5, when the lift is at the vehicle floor level loading position, the vertical distance between the lift platform and the vehicle floor shall not exceed 0.625 inch, as measured vertically from the horizontal plane tangent to the platform surface to the horizontal plane tangent to the vehicle floor, and the horizontal distance between the platform and floor shall not exceed 0.5 inch, as measured laterally and horizontally from the longitudinal vertical plane tangent to the outermost edge of the vehicle floor adjacent to the platform to the longitudinal vertical plan tangent to the inboard edge of the platform surface.

S5.3.4.3 Except as provided in S5.3.4.4, when the lift is at the ground level loading position, the vertical distance between the ground and the top of the outboard edge of the platform surface, or the top of any outer barrier when it is used as a loading ramp, shall be not greater than 0.25 inches.

S5.3.4.4 When the lift is at the ground level loading position, the vertical distance between the ground and the top of the outboard edge of the platform surface, or the top of any outer barrier when it is used as a loading ramp, shall be not greater than 0.5 inches if the slope of the platform surface or loading ramp is not greater than 1:2.

S5.3.4.5 Throughout the range of passenger operation, when tested in

accordance with S6.3 and S6.5, the horizontal distance between the lift platform and any outer barrier shall not exceed 0.625 inch as measured laterally and horizontally from a longitudinal vertical plane tangent to the side of the barrier adjacent to the platform to the longitudinal vertical plane tangent to the edge of the platform surface adjacent to the barrier.

S5.3.4.6 Throughout the range of passenger operation, the horizontal distance between the lift platform and the inner roll stop or vehicle structure required by S5.3.8 shall not exceed 0.625 inch as measured laterally and horizontally from a longitudinal vertical plane tangent to the side of the inner roll stop or vehicle structure adjacent to the platform to the longitudinal vertical plane tangent to the edge of the platform surface adjacent to the inner roll stop or vehicle structure.

S5.3.5 *Platform deflection.* When measured under S6.3 and S6.5 in the same horizontal direction, the vertical angle of deflection of the platform surface, in relation to a plane tangent to the side of the vehicle on which the lift is attached, when loaded, shall not differ by more than three degrees from the vertical angle of deflection of the surface from the same reference when unloaded.

S5.3.6 *Edge guards.*

S5.3.6.1 Except as provided in S5.3.6.3, the lift shall have edge guards which extend continuously along each side of the lift platform parallel to the direction of wheelchair movement during loading and unloading.

S5.3.6.2 Edge guards shall have vertical sides facing the platform surface and have a minimum height of 1.5 inches, measured vertically from the platform surface.

S5.3.6.3 The lift need not have edge guards on the sides of any portion of its platform which does not extend outboard of the vertical longitudinal plane tangent to the side of the vehicle on which the lift is installed throughout the range of passenger operation.

S5.3.7 *Wheelchair retention.*

S5.3.7.1 Except as provided in S5.3.7.2, the lift shall, throughout its range of passenger operation, have a means of retaining a wheelchair upright with all of its wheels on the platform surface, on the vehicle floor, or a combination of the platform surface and vehicle floor, when the wheelchair ceases motion after the wheelchair retention device is tested in accordance with S6.6.

S5.3.7.2 If the means of complying with S5.3.7.1 is an outer barrier, the outer barrier shall be deployed whenever any part of the platform surface is above a horizontal plane 3 inches above the ground. For the purpose of this paragraph, "deployed" means the outer barrier is in the same position relative to the platform surface as when the barrier is tested for the purposes of S5.3.7.2.

S5.3.8 *Inner roll stop.*

S5.3.8.1 Except as provided in S5.3.8.2, the lift shall have an inner roll stop that meets the requirements of S5.3.8.3 throughout the lift's range of passenger operation.

S5.3.8.2 The lift need not have an inner roll stop in a vehicle that meets the requirements of S5.3.4.5 and S5.3.8.3 by means of a portion of the vehicle structure throughout the range of passenger operation.

S5.3.8.3 When tested in accordance with S6.7, the inner roll stop or vehicle structure shall withstand a total force of 300 pounds applied perpendicular to the inner roll stop or vehicle structure in the horizontal plane and parallel to the platform surface in the vertical plane, at any height on the roll stop or portion of the vehicle structure functioning as the roll stop, without more than 0.5 inches of horizontal deflection.

S5.3.9 *Handrails.*

S5.3.9.1 Throughout the range of passenger operation, there shall be handrails located on each side of the lift that meet the requirements of S5.3.9.2 through S5.3.9.6.

S5.3.9.2 Each handrail shall be not less than 30 inches and not more than 38 inches above the platform, measured vertically.

S5.3.9.3 The vertical projection of each handrail shall intersect two vertical planes that are perpendicular to the direction of travel of a wheelchair on the lift, and are 8 inches apart.

S5.3.9.4 When tested in accordance with S6.8, the handrails shall withstand a force of 100 pounds applied at any point and in any direction on the handrail without more than 0.125 inches of displacement.

S5.3.9.5 The handrails shall be not less than 1.25 inches and not more than 1.5 inches in diameter or width, with no less than 1.5 inches of clearance between the outside of the handrail and any fixed portion of the vehicle.

S5.3.9.6 Throughout the range of passenger operation, the handrails shall move such that the relative position of the handrails to the platform surface does not change.

S5.3.10 *Platform markings.* All edges of the platform surface, the inner edge of the floor of the vehicle adjacent to the lift, and any designated standing area shall be outlined. The markings shall be at least 1 inch wide and of a color that contrasts with its background.

S5.4 *Structural integrity requirements.* No separation, fracture, or breakage of the platform, the supporting structure, or the lifting mechanism shall occur as a result of conducting the static load test in S6.4.

S5.5 *Platform free fall limits.* The platform, loaded as specified in S6.3, shall not fall vertically faster than 12 inches per second in the event of any failure of either or both of the powered and manual systems for raising and lowering the platform.

S5.6 *Control systems.*

S5.6.1 *Control console.*

S5.6.1.1 The lift controls shall be located on a console and shall consist of a power switch, a function selection switch, and an operating switch.

S5.6.1.2 The control console shall be located in a position such that the control operator has a direct, unobstructed view of the lift passenger and wheelchair, if the passenger is using one, when the lift is in the ground loading position, and of the lift passenger throughout the lift's range of passenger operation.

S5.6.1.3 The control console shall have simple instructions, written in English, on or near it that directs the operator in the lift operating procedures.

S5.6.1.4 Each operating position of each lift control shall be identified on the lift console with characters which are at least 0.5 inches in height and which are capable of being illuminated in accordance with S5.3 of Standard No. 101 when the headlights are illuminated.

S5.6.2 *Power switch.* The power switch shall have two positions: on and off. The "on" position shall allow lift operation whenever the function selection switch is in any position other than the "off" position and the operating switch is depressed. When the power switch is in the "on" position, an indicator light on the console shall be activated. The "off" position shall prevent lift movement.

S5.6.3 *Function selection switch.*

S5.6.3.1. The function selection switch shall have positions for not less than five designated functions in the following order:

(a) Off—No function shall be operable.

(b) Deploy or Unfold—The lift shall be movable from a stowed position to a platform position.

(c) Down—The lift platform shall be lowerable.

(d) Up—The lift platform shall be raisable.

(e) Stow or Fold—The lift shall be movable from a platform position to a stowed position.

S5.6.3.2 The function selection switch may have four additional functions: deactivate wheelchair retention device; activate wheelchair retention device; roll stop down; and roll stop up. If any one or more of these functions are included, their order on the function switch shall be as follows:

(a) Off.
(b) Deploy or Unfold.
(c) Down.
(d) Deactivate Wheelchair Retention Device.
(e) Activate Wheelchair Retention Device.
(f) Up.
(g) Lower Roll Stop.
(h) Raise Roll Stop.
(i) Stow or Fold.

S5.6.3.3 The function selection switch shall prevent the simultaneous performance of more than one function.

S5.6.4 *Operating switch.* The operating switch shall be identified on the console with the word "operate" and shall activate the lift function selected with the function selection switch. The operating switch shall activate the selected function only while it is pressed. Release of the operating switch shall stop the lift motion.

S5.6.5 *Design safety.* Any malfunction of the control system shall not prevent the operation of any of the interlocks as specified in S5.9.

S5.7 *Jacking prevention.* The control system or lift design shall prevent raising of the vehicle by the lift system if the operating switch is continuously pressed while the function selection switch in the "down" position and the lift is at the ground level loading position.

S5.8 *Manual operation.* The lift shall have a manual method of operating the lift to lower the platform to the ground level loading position and raise the platform to the vehicle floor level loading position from any position in its cycle when loaded in accordance with S6.3. The wheelchair retention device and inner roll stop shall be manually deployable and stowable.

S5.9 *Interlocks.*

S5.9.1 The vehicle shall have interlocks that prevent—

S5.9.1.1 Forward or rearward mobility of the vehicle unless the lift is stowed.

S5.9.1.2 Operation of the lift from the stowed position until forward and rearward mobility of the vehicle is inhibited, by means of a parking brake, placing the transmission in park, or other positive device other than the vehicle's service brakes, and the lift access door is open.

S5.9.1.3 Stowing of the lift whenever there is a load of 50 pounds or greater on the platform surface.

S5.9.1.4 Movement of the lift up or down unless any inner roll stop required to comply with S5.3.8 is deployed.

S5.9.1.5 Movement of the lift up or down when the platform surface is above the horizontal plane three inches above the ground level loading position unless the wheelchair retention device required to comply with S5.3.7 is deployed.

S5.9.1.6 The wheelchair retention device required to comply with S5.3.7 from being stowed unless the platform surface is below the horizontal plane three inches above the ground level loading position.

S5.9.2 The vehicle shall comply with S5.9.1 through S5.9.1.5 both before and after static load test II specified in S6.4.

S5.10 *Lift operational requirements.*

S5.10.1 Throughout the range of passenger operation, the maximum vertical and horizontal velocity of the platform shall be 6 inches per second.

S5.10.2 Except when operating in the manual method of operation required by S5.8, the lift shall complete a cycle in not more than 65 seconds.

S5.10.3 Throughout the range of passenger operation, the maximum platform horizontal and vertical acceleration shall not exceed 0.3 g, with either no load or with a 600 pound load applied as specified in S6.3, when tested in accordance with SAE Standard J211 OCT88 Channel Class 60.

S5.10.4 The vehicle shall comply with S5.10.1 through S5.10.3 both before and after static load test II specified in S6.4.

S6 *Test conditions and procedures.*

S6.1 *Test pallet.* The surface of the test pallet which rests on the platform used for the tests specified in S6.3 through S6.5 measures not less than 25 inches by 25 inches and not more than 27 inches by 27 inches.

S6.2 *Slip resistance test.* Determine compliance with S5.3.2, using the test vehicles specified in S6.2.1 and S6.2.2, loaded as specified in S6.2.3, oriented as specified in S6.2.4, under the procedures specified in S6.2.5.

S6.2.1 The test vehicles are—

(a) An electric wheelchair,
(b) A manual wheelchair, and
(c) An electric three-wheeled "scooter" wheelchair.

S6.2.2 The test vehicles are current production models having at least 10 percent of the sales volume for that type of wheelchair (electric, manual, scooter), equipped with standard production brakes and tires. The brakes are engaged during this test. The tires are inflated to the manufacturer's recommended pressure.

S6.2.3 Test vehicle loads are—

(a) No load, and
(b) A ballast of 165 pounds, with a center of gravity height of not less than 11 inches.

S6.2.4 Test vehicle orientations are—

(a) Forward, with the front of the wheelchair oriented towards the outer edge of the platform.
(b) Rearward, with the rear of the wheelchair oriented towards the outer edge of the platform.

S6.2.5 Test procedure.

S6.2.5.1 Position the lift platform according to either paragraph (a) or (b):

(a) Position the vehicle so as to obtain a 30 degree slope of the lift platform, as measured from the horizontal, with the outer edge of the platform at the lower end.

(b) Disconnect the lift platform from the vehicle and position the platform to obtain a 30 degree slope of the lift platform, as measured from the horizontal, with the outer edge of the platform at the lower end.

S6.2.5.2 Using a spray pattern which evenly wets the entire platform surface, and an application rate of 1 to 2 gallons per minute, continuously wet the platform with water beginning two minutes before placing the test vehicle on the platform, and continuing during the conduct of the test.

S6.2.5.3 Except as provided in S6.2.2, do not use any restraint or securement, including the wheelchair retention device, to retain the test vehicle on the platform.

S6.2.5.4 Place each test vehicle on the wetted platform at the inner edge of the lift platform (the higher end).

S6.3 *Static load test I.*

S6.3.1 With the unloaded lift platform at the vehicle floor level loading position, measure the vertical angle of the platform surface deflection from a plane tangent to the side of the vehicle on which the lift is attached. The angle is measured in a transverse vertical plane, in the case of a lift mounted on the side of a vehicle and in a longitudinal vertical plane, in the case of a lift mounted on the rear of a vehicle.

S6.3.2 Determine compliance with S5.3.4.2.

S6.3.3 Lower the lift platform to the ground level loading position to determine compliance with S5.4.3.5 and S5.4.3.6.

S6.3.4 Determine compliance with S5.3.4.3.

S6.3.5 Place a static load on the geometric center of the upper surface of the test pallet such that the total weight of the static load and test pallet is 600 pounds.

S6.3.6 Place the loaded test pallet on the geometric center of the platform surface.

S6.3.7 Raise the lift platform from the ground level loading position to the vehicle floor level loading position. Measure the vertical and horizontal gaps to determine compliance with S5.3.4.2 and measure the vertical angle of platform surface deflection from a plane tangent to the side of the vehicle as specified in S6.3.1, and subtract the angle measured under S6.3.1 from the angle measured under this paragraph to determine compliance with S5.3.5.

S6.3.8 Lower the lift platform from the vehicle floor level loading position to the ground level loading position and determine compliance with S5.4.3.5 and S5.4.3.6. Measure the vertical gap specified in S5.3.4.3 to determine compliance with that section.

S6.4 *Static load test II.*

S6.4.1 Place a static load on the geometric center of the upper surface of the test pallet such that the total weight of the static load and test pallet is 1,800 pounds.

S6.4.2 When the lift platform is at the vehicle floor level loading position, place the loaded test pallet on the geometric center of the platform surface.

S6.4.3 Two minutes after placing the loaded test pallet on the platform surface, remove the loaded test pallet and examine the lift and vehicle for compliance with structural integrity requirements of S5.4.

S6.4.4 After removing the loaded test pallet, operate the lift through an entire cycle.

S6.4.5 *Static load test III.* After completing the static load test specified in S6.4.1 through S6.4.4, repeat static load test I specified in S6.3, except make no measurement under S6.3.1.

S6.6 *Wheelchair retention test.* Determine compliance with S5.3.7 using the test vehicle specified in S6.6.1, loaded with the ballast specified in S6.6.2, under the procedures specified in S6.6.3.

S6.6.1 The test vehicle is an Invacare Ranger 2 wheelchair, equipped with batteries, a standard adult size seat, standard foot rests, 20-inch rear wheels, 8-inch front castors, and a standard upright back.

S6.6.2 The ballast consists of sand loaded in a box structure which—

(a) Is capable of being restrained to the wheelchair seat.

(b) Has sufficient capacity to hold up to 225 pounds of sand (approximately 2.5 cubic feet).

(c) Has a rectangular base whose sides are not less than 12 and not more than 18 inches long.

(d) Has a center of gravity height of not less than 9 and not more than 10 inches when filled with 104 pounds of sand.

(e) Has a center of gravity height of not less than 12 and not more than 13 inches when filled with 225 pounds of sand.

S6.6.3 Conduct the wheelchair retention test under the following procedures:

(a) Place the lift platform at the vehicle floor level loading position.

(b) Position the vehicle so that the lift platform has an 8 degree downward slope from the horizontal, measured in a transverse vertical plane, in the case of a lift mounted on the side of a vehicle and in a longitudinal vertical plane, in the case of a lift mounted on the rear of a vehicle.

(c) Position the test vehicle in the vehicle, with the front or rear wheels (depending on the wheelchair orientation required by paragraph (e) of this section) at or near the inboard edge of the platform surface, so that the test vehicle will move parallel to the edge guards.

(d) Accelerate the test vehicle on the platform so that the vehicle impacts the wheelchair retention device at a speed of not less than 3.8 mph and not more than 4.2 mph, 4 times, once for each of the 4 combinations of the directions and weights specified in paragraph (e) of this section.

(e) The test vehicle is operated in the following directions and with the following ballast loads secured to its seat with its wheelchair seat belt—

(1) Forward, with a load of 104 pounds.

(2) Forward, with a load of 225 pounds.

(3) Rearward, with a load of 104 pounds.

(4) Rearward, with a load of 225 pounds.

S6.7 *Inner roll stop test.* With the inner roll stop deployed, apply a force of 300 pounds as specified in S5.3.8, through two points (150 pounds per point), with each point having an area of not more than 2 square inches each, with the geometric center of the load applicator located 11.8 inches on either side of the midpoint of the roll stop or of the portion of the vehicle structure functioning as the roll stop, and with the geometric center of the load applicator at a height of 2.5 inches above the platform surface. The force is applied perpendicular to a vertical longitudinal plane through the vehicle longitudinal centerline for lifts mounted on the side of the vehicle and parallel to that plane for lifts mounted on the rear of the vehicle. Attain the force within 1 minute after beginning to apply it. Maintaining the force, measure the amount of deflection 1 minute after attaining the force to determine compliance with S5.3.8.

S6.8 *Handrail test.* Apply a force of 100 pounds through an area of more than 2 square inches in any direction at any point on the handrail. Attain the force within 1 minute after beginning to apply it. Maintaining the force, measure the amount of displacement 5 seconds after attaining the force to determine compliance with S5.3.9.

Issued on February 22, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–4455 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Rule to Reclassify the Louisiana Pearlshell (*Margaritifera hembeli*) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reclassify the Louisiana Pearlshell, *Margaritifera hembeli*, from endangered to threatened under the authority of the Endangered Species Act of 1973 (Act), as amended. This freshwater mussel is currently known from two major drainage systems in Rapides and Grant Parishes, Louisiana, with populations in the latter drainage system having been discovered subsequent to its classification as endangered. The species still faces threats due to sedimentation from gavel mining, the potential for collecting, and population fragmentation by impoundments, but the degree of threat is now less than originally thought. Reclassification from endangered to threatened would more appropriately reflect the species' current status. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 27, 1993. Public hearing requests must be received by April 12, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 6578

Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Louisiana pearlshell was described as *Unio hembeli* by Conrad in 1838. This species was placed in the genus *Margaron* by Lea (1870), then in *Margaritana* by Simpson (1900), and finally in *Margaritifera* by Athearn (1970). This mussel is about 100 millimeters (mm) (3.9 inches) long, 50 mm (2.0 inches) high, and 30 mm (1.2 inches) wide. The shell is generally elliptical with an angular posterior margin, obtuse undulations on the posterior slope, with a dark brown to black periostracum, and white nacre. The species has been collected from only the Bayou Boeuf drainage, Rapides Parish, and the Red River drainage, Grant Parish, Louisiana. The Alabama population of earlier records is now considered a different species, the Alabama pearlshell, which was described as *Margaritifera marrianae* by Johnson (1983).

The Service initially listed the Louisiana pearlshell as an endangered species on February 5, 1988 (53 FR 3567). Since the initial listing, the species has been discovered in the Red River drainage of Grant Parish. The Service conducted the surveys of this drainage in 1991 and 1992 in an effort to completely define the range of the species. The 1991 survey found 12 populations in 8 streams that are tributary to the Red River. The 1992 survey (Hall 1992) confirmed these findings, extended the range within these streams, and searched more than 50 streams in Grant, Rapides, and Winn Parishes, Louisiana. Hall did not locate any additional populations of the Louisiana pearlshell. However, within the Grant Parish portion of the range there are several streams that are posted private property. Since Hall did not survey streams where he could not get permission to enter the property, it is possible that additional populations of the Louisiana pearlshell occur on private property within the geographic area of the currently known range. The current known range of this species now consists of 8 streams in the Red River drainage and 11 streams in the Bayou Boeuf drainage. The Red River is a major tributary of the Mississippi River and the water from Bayou Boeuf eventually flows into Vermilion Bay of the Gulf of Mexico.

The objective of the 1990 recovery plan for this species was to reclassify it to threatened status by improving populations within the historic occupied range in the Bayou Boeuf drainage. While this objective has not been fully met, the extent of the known range has increased substantially with the discovery of the Red River drainage populations and the danger of extinction has diminished. This expansion of known range is sufficient to consider the reclassification of this mussel.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for reclassifying a species. The Service's listing regulations (50 CFR part 424) provide for a review of the five following factors when reclassifying (or listing or delisting) a species. These factors and their application to the Louisiana pearlshell, *Margaritifera hembeli*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

At the time of listing, the Louisiana pearlshell was thought to be restricted to 11 streams in the Bayou Boeuf drainage of Rapides Parish, Louisiana. The range in this system had been reduced and fragmented by impoundments. Beaver dams were inundating populations and had eliminated a population of approximately 1000 pearlshells in 1985. In addition, populations were being impacted by sedimentation from gravel pits on private lands and from erosion where clear cuts extended to the bank of streams. Clear cuts extending to the stream bank can increase runoff with resultant scouring of the stream bed that creates unstable habitat for mussels. Since the listing in 1988, the discovery of eight additional populations has substantially increased the known range of the species. The U.S. Forest Service has an active program to control beavers within the range of the Louisiana pearlshell and has a policy on Kisatchie National Forest that provides for streamside zones of generally 100 feet along the banks of perennial and intermittent streams. The streamside zones are managed for water quality and wildlife. Timber harvesting in these zones is limited to selective cutting by removing trees or groups of trees for the purpose of wildlife habitat improvement. During timber harvest, additional measures are used to minimize sedimentation of perennial streams. While the populations of this species are still fragmented and isolated by impoundments and are still being impacted by sedimentation from private lands, the number of populations has increased and threats to populations on Kisatchie National Forest have been reduced.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collecting poses a significant threat to this species. This mussel occurs in very shallow, clear streams and generally has about one inch of the shell protruding from the substrate. An entire population may occur within a relatively short stretch of a stream. The restricted distribution within a stream and the ease of observing individual mussels makes collection of the species very easy. A single overzealous recreational or scientific collector could drastically reduce the population of any given stream in a few hours. The collecting impacts could easily reduce the population below levels necessary for reproduction. The threat of collecting remains unchanged since the listing.

C. Disease or Predation

There is no evidence of threats from disease. The shallow stream habitat of this species makes it very vulnerable to predation by raccoons and muskrats. However, there has not been a consistent pattern of predation on this mussel.

D. The Inadequacy of Existing Regulatory Mechanisms

This species is protected by the Endangered Species Act of 1973, as amended. It is also protected by the Louisiana Department of Wildlife and Fisheries as an endangered species. The Service does not believe that reclassification to threatened status will result in substantive change in the protection afforded this species under these regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The discovery of the Louisiana pearlshell in eight streams of a different river drainage from the historically known populations greatly benefitted the recovery program for this species. This increase in number of populations and number of individual mussels significantly reduces the threat of natural or manmade factors affecting the

continued existence of this species. The fish host remains unknown and impacts to this aspect of the life history cannot be evaluated. Many of the streams where this species occurs are still isolated from each other and this may restrict gene flow. Isolated gene pools are vulnerable to loss of genetic variability resulting in greater susceptibility of the population to catastrophic events, whether natural or man-made.

Summary of Status

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify this species from endangered status to threatened status. Threatened status is more appropriate because the species is now known from 19 streams in two major drainages. While a stream's population is still susceptible to a single catastrophic event, the entire population of the species is much less likely to be affected to an extent the species would be in danger of extinction throughout all or a significant portion of its range. The recovery plan for this species will be revised to include an objective for delisting. When that objective is attained, the Service will recommend the Louisiana pearlshell for delisting.

Available Conservation Measures

This rule changes the status of the Louisiana pearlshell from endangered to threatened. This rule acknowledges that the populations of the Louisiana pearlshell are relatively secure and are no longer in danger of extinction. This change in classification does not significantly alter the protection of this species under the Endangered Species Act. Anyone taking, attempting to take, or otherwise possess a Louisiana pearlshell in an illegal manner would be subject to penalty under the Endangered Species Act. There are no differences in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from Federal actions that would jeopardize the continued existence of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h), the list of Endangered and Threatened Wildlife, under "CLAMS", by revising the "Status" column for the entry "Pearlshell, Louisiana" to read "T" instead of "E".

Dated: February 4, 1993.

Richard N. Smith,

Deputy, Director, Fish and Wildlife Service.

[FR Doc. 93–4447 Filed 2–25–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 37
Friday, February 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-002-1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and a finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect these documents are encouraged to call ahead (202-690-2817) to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and a finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Facilities	Date issued	Organisms	Field test location
92-260-01 ..	Rogers NK Seed Company	01-08-93 ...	Petunia plants genetically engineered to express the dihydrofolate-4-reductase gene to modify flower color.	Florida.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 22nd day of February 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-4502 Filed 2-25-93; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 93-003-1]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered

organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead (202–690–2817) to facilitate entry into the reading room. You may obtain copies of the document by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–008–01 ..	Frito-Lay, Incorporated	01–08–93 ...	Potato plants genetically engineered to express a delta-endotoxin from Bacillus *thuringiensis* subsp. *tenebrionis*, chitinase, and the coat proteins of potato leaf roll virus (PLRV) and potato virus Y (PVY) for resistance to Colorado potato beetle, *Rhizoctonia solani*, PLRV, and PVY, respectively.	Wisconsin

Done in Washington, DC, this 22d day of February 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–4503 Filed 2–25–93; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

American Sports Kids Association Little Green Valley Camp, San Bernardino National Forest, San Bernardino County, CA; Cancellation of Notice of Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, hereby cancels its Notice of Intent to prepare an Environmental Impact Statement (EIS) for the American Sports Kids Association (ASKA) proposal to refurbish and expand the organization camp at Little Green Valley which was published in the **Federal Register**, Volume 55, No. 211, page 45829, Wednesday, October 31, 1990. A Notice of Availability for the Draft Environmental Impact Statement was published in the **Federal Register** on January 4, 1991.

Dated: February 18, 1993.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 93–4439 Filed 2–25–93; 8:45 am]

BILLING CODE 3410-11-M

Jerritt Canyon Mine Expansion, Humboldt National Forest, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed expansion and development of open pit gold mines in Elko County, Nevada. This EIS will be prepared by contract and funded by the proponent, Independence Mining Company, Incorporated (IMC).

DATES: Scoping meetings will be held March 8, 1993, at the Red Lion Inn and Casino, 2065 E. Idaho St., Elko, Nevada at 7:00 p.m.: an informal open house meeting at the Bureau of Land Management State Office, 850 Harvard Way, Reno, Nevada on March 15, 1993 between 3–8 p.m.; and an informal open house to be held at Independence School, Tuscarora and Forest Service Office, Mountain City, Nevada on March 17, and 18 from 3 to 7 p.m. respectively. Comments concerning the scope of the analysis must be received by April 10, 1993 to ensure timely consideration.

ADDRESSES: Scoping comments are to be sent to: Jack Carlson, District Ranger, Humboldt National Forest, P.O. Box 276, Mountain City, NV 89831.

Responsible officer. John Inman, Forest Supervisor, Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed project and DEIS to Don Carpenter, Project Coordinator, Humboldt National Forest, P.O. Box 276, Mountain City, NV 89831 702–763–6691.

SUPPLEMENTARY INFORMATION: Independence Mining Company has submitted to the Mountain City Ranger District, Humboldt National Forest, a Proposed Plan of Operation (POO). The POO describes the proposed mining development activities, operation and reclamation procedures in Elko County, Nevada. The proposal includes: developing three new open pits mines; constructing additional waste rock dumps, soil stockpiles, ore stockpiles, haul roads and support facilities; expanding an existing open pit and waste rock dump; and development of specific mitigation measures. The proposal would disturb approximately 3,000 acres of land of which about 280 acres have been disturbed by previous and current mining activities. The detailed analysis area is about 10,850 acres in size. Ore will be processed at the existing mill site. Two additional tentative alternatives have been developed for analysis based on internal scoping. They were developed to reduce the acres of disturbance in response to resource values and economics; and the other was intended to increase the area of potential revegetation. A No Action

alternative will also be considered during the analysis process. Other alternatives may be developed to address significant issues and to mitigate impacts. Initial internal scoping with cooperating and participating agencies developed issues which were used to develop two tentative alternatives for analysis. The following issues are not intended to be an all inclusive list, but to identify some of the basic issues involved in the proposed project area. They are: Effects on golden eagle nests identified in the area; impacts to ground water quality; impacts to surface water quality; what is the potential for acid rock drainage (ARD); what are the impacts to the mule deer habitat and sage grouse brooding habitat; what impacts will result from aspen removal; how much wetland area is going to be removed; what will be the reduction in grazing AUM's; what is the reclamation potential for the area; will the project be economical to mine?

Public participation will be especially important at several points during the analysis. The first point is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The process will include: (1) Identifying potential issues; (2) Identifying issues to be analyzed in depth; (3) Eliminating issues or those which have been covered by a relevant previous environmental analysis; (4) Exploring additional alternatives; (5) Identifying potential environmental effects of the proposed action and alternatives; (6) Determining potential cooperating agencies and task assignments. Several government agencies have been invited to participate in this project. The Bureau of Land Management is a cooperating agency because the mill site is located on lands they administer. In addition the Nevada State Department of Minerals and Nevada State Department of Wildlife are also cooperating agencies. The U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and the Nevada Department of Environmental Protection will participate in the process as technical advisors and reviewers on those areas they have technical expertise and/or regulatory authority. Various Federal, State and local permits and licenses will be required to implement the proposed action. They include, but are not limited to, a 404 permit and National Pollution Discharge Elimination System Permit for stormwater discharges.

The Forest Service is the lead agency for this project. John Inman, Forest Supervisor of the Humboldt National Forest is the responsible officer. He will need to make a decision to approve the proposed Plan of Operation or one of the alternatives and mitigation measures giving consideration to IMC's rights under the 1872 Mining Law as amended and other applicable Forest Service regulations and allowances for surface uses consistent with the Humboldt National Forest Land and Resource Management Plan (1986), while providing for resource protection which is necessary for the proposal to comply with federal and state statues and regulations. The Draft Environmental Impact Statement (DEIS) is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for public review in July, 1993. At that time, EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 22, 1993.

John P. Inman,

Forest Supervisor.

[FR Doc. 93–4544 Filed 2–25–93; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Colorado River Salinity Control Program (CRSCP), Moapa Valley Unit, NV; Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: William D. Goddard, Responsible Federal Official for projects administered under the provisions of title II of the Colorado River Basin Salinity Control Act (Pub. L. 93–320 as amended by Pub. L. 98–569) in the state of Nevada, is hereby providing notification that a record of decision to proceed with installation of the Moapa Valley Unit of the Colorado River Salinity Control Program is available. Single copies of this record of decision may be obtained from William D. Goddard at the address shown below.

FOR FURTHER INFORMATION CONTACT: William D. Goddard, State Conservationist, Soil Conservation Service, 5301 Longley Lane, Bldg. F, suite 201, Reno, NV 89511, Telephone (702) 784–5863.

(Catalog of Federal Domestic Assistance Program No. 10.902, Conservation Operations Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Date: February 17, 1993.

William D. Goddard,

State Conservationist.

[FR Doc. 93–4442 Filed 2–25–93; 8:45 am]

BILLING CODE 3410-16-M

North West Middle Suwannee River Area Watershed, Lafayette County, FL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the North West Middle Suwannee River Area Watershed, Lafayette County, Florida.

FOR FURTHER INFORMATION CONTACT: T. Niles Glasgow, State Conservationist, Soil Conservation Service, Federal Building, 401 SE First Ave., room 248, Gainesville, Florida 32601; Telephone: 904–377–0946.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impact on the environment.

As a result of these findings, T. Niles Glasgow, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this Project.

The project concerns a plan to relieve threats to human health and contamination of ground and surface waters by nitrate leaching from intensive agricultural operations. The planned works of improvement consist of agricultural Best Management Practices to safely collect, store, transport and utilize agricultural waste.

This Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agenices and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed for the environmental assessment are on file and may be reviewed by contacting T. Niles Glasgow.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local Officials)

Dated: February 18, 1993.

T. Niles Glasgow,

State Conservationist.

[FR Doc. 93–4545 Filed 2–25–93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Open Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held March 17, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARs), and provides for continuing review of update the EARs as needed.

AGENDA

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status report on work projects:
   - Nonproliferation control regimes
   - Prelicensing and post-shipment checks
   - Regulatory review process.
4. Discussion of nonproliferation licensing process.
4. Discussion of Enhanced Proliferation Control Initiative (EPCI) end-use controls.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, TAC Unit/ODAS–EA/BXA, room 1621, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 22, 1993.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 93–4468 Filed 2–25–93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–427–602]

Brass Sheet and Strip From France; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on brass sheet and strip from France. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1993.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce published an antidumping duty order on brass sheet and strip from France (52 FR 1217). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than March 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no

longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4432 Filed 2–25–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–602–039]

Canned Bartlett Pears From Australia; Intent To Revoke Antidumping Funding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on canned bartlett pears from Australia. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1993.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: David Levy or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of the Treasury published an antidumping finding on canned bartlett pears from Australia (38 FR 7566). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than March 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4429 Filed 2–25–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–570–002]

Chloropicrin From the People's Republic of China; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1993.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce published an antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than March 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4431 Filed 2–25–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–307–807, A–357–807]

Notice of Postponement of Final Antidumping Duty Determinations of Sales at Less Than Fair Value: Ferrosilicon From Venezuela and Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1776.

POSTPONEMENT: On December 18, 1992 (57 FR 61879, December 29, 1992), the Department of Commerce ("the Department") issued an affirmative preliminary determination in the antidumping duty investigation of ferrosilicon from Venezuela. Also on December 18, 1992 (57 FR 61874, December 29, 1992), the Department issued a negative preliminary determination in the antidumping duty investigation of ferrosilicon from Argentina.

On January 13, 1993, CVG-Venezolana de Ferrosilicio C.A., respondent and a

producer of significant proportion of the merchandise in the Venezuelan investigation, requested that the Department postpone the final determination in that investigation 60 days, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1673d(a)(2)(A)). This postponement was requested in order to allow the Department sufficient time to analyze the data it has gathered in the investigation.

In addition, on January 14, 1993, petitioners in the antidumping duty investigation of ferrosilicon from Argentina (AIMCOR, Alabama Silicon, American Alloys, Globe Metallurgical, Silicon Metaltech, United Autoworkers of America Local 523, United Steelworkers of America Locals 2528, 5171, 3081, and 12646, and Oil Chemical & Atomic Workers Local 389) requested that the Department postpone the final determination in that investigation 60 days, in accordance with section 735(a)(2)(B) of the Act. This postponement was requested in order to give the Department additional time to investigate and to verify whether there were sales to the United States during the period of investigation and to consider other issues raised in the proceeding.

We find no compelling reasons to deny the requests. Thus, in accordance with 19 CFR 353.20(b)(1), we are postponing the dates of the final determinations until May 3, 1993.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20(b)(2).

Dated: February 2, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4433 Filed 2–25–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–123–604]

Certain Fresh Cut Flowers From Canada; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on certain fresh cut flowers from Canada. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1993.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce published an antidumping duty order on certain fresh cut flowers from Canada (52 FR 8491). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than March 31, 1993, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4430 Filed 2–25–93; 8:45 am]

BILLING CODE 3510–DS–M

Brooklyn College of the City University of New York et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–075. *Applicant:* Brooklyn College of the City University of New York, Brooklyn, NY 11210. *Instrument:* Coaxial Nanosecond FlashLamp, Model Mark 3. *Manufacturer:* IBH Consultants, Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 27215, June 18, 1992. *Reasons:* The foreign instrument provides: (1) Repetition rates of 1.0 Hz to 100 kHz, (2) 2.0 ns UV light pulses and (3) 1.0 ns lifetime resolution. *Advice Submitted By:* National Institutes of Health, September 11, 1992.

Docket Number: 92-078. *Applicant:* St. Louis University, St. Louis, MO 63104. *Instrument:* High Intensity Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* See notice at 57 FR 30470, July 9, 1992. *Reasons:* The foreign instrument provides 210 mJ of irradiated energy in the range from 300 to 400 nm with a temporal resolution of 1.0 ms or less, *Advice Submitted By:* National Institutes of Health, September 11, 1992.

Docket Number: 92–094. *Applicant:* Duke University, Durham, NC 27706. *Instrument:* Magnetic Measuring System. *Manufacturer:* Institute of Nuclear Physics, C.I.S. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides an 11-element Hall probe array with high accuracy and spatial field definition. *Advice Received From:* National Institute of Standards and Technology, October 21, 1992.

Docket Number: 92–104. *Applicant:* Auburn University, Auburn University, AL 36849. *Instrument:* Four Frame X-ray Imaging System. *Manufacturer:* Ingenieurburo Armin Schulz, Germany. *Intended Use:* See notice at 57 FR 39394, August 31, 1992. *Reasons:* The foreign instrument provides a four-sector field with: (1) Spatial resolution to 30 mm $^{-1}$, (2) minimum frame exposition of 10^{-9}s and (3) gain to 10^{5}. *Advice Received From:* National Institute of Standards and Technology, October 26, 1992.

Docket Number: 92–105. *Applicant:* University of Miami, Miami, FL 33149.

Instrument: Radar. *Manufacturer:* Marex Technology Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 39394, August 31, 1992. *Reasons:* The foreign instrument provides: (1) Mapping of areas to 700 km at 20-minute intervals with spatial resolution to 250 m, (2) pusle-to-pulse coherent signal processing and (3) a phased array antenna for high directional accuracy. *Advice Received From:* Department of Defense, October 28, 1992.

Docket Number: 92–108. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Spectrometer System. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* See notice at 57 FR 39395, August 31, 1992. *Reasons:* The foreign instrument provides both inductively coupled plasma and glow discharge mass spectrometry with detection limits of 1 pptr for a 1 ppb equimolar solution of Pb, In, and Be and a minimum copper ion signal of 10.0^{-9}A. *Advice Received From:* National Institute of Standards and Technology, December 4, 1991 (comparable case).

The National Institutes of Health, National Institute of Standards and Technology, and Department of Defense advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–4424 Filed 2–25–93; 8:45 am]

BILLING CODE 3510–DS–F

City of Chicago, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–106. *Applicant:* City of Chicago, Chicago, IL 60611. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* See notice at 57 FR 39395, August 31, 1992. *Order Date:* January 24, 1992.

Docket Number: 92–114. *Applicant:* Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center, Charlotte, NC 28232–2861. *Instrument:* Electron Microscope, Model CM–10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 57 FR 44361, September 25, 1992. *Order Date:* April 14, 1992.

Docket Number: 92–119. *Applicant:* Howard Hughes Medical Institute, New Haven, CT 06536–0812. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Order Date:* May 14, 1992.

Docket Number: 92–124. *Applicant:* Louisiana State University Medical Center, New Orleans, LA 70112–1393. *Instrument:* Electron Microscope, Model JEM–1210EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Order Date:* June 26, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–4427 Filed 2–25–93; 8:45 am]

BILLING CODE 3510–DS–F

Federal Highway Administration, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–133. *Applicant:* Federal Highway Administration, McLean, VA 22101-2296. *Instrument:* Asphalt Concrete Slab Wheel Track Tester. *Manufacturer:* Helmut Wind, Germany. *Intended Use:* See notice at 57 FR 44360, September 25, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–4426 Filed 2–25–93; 8:45 am]

BILLING CODE 3510–DS–F

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–128. *Applicant:* University of California, Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 216. *Manufacturer:* Mass Analyzer Products, Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Reasons:* The foreign instrument provides a sensitivity of 6.0×10^{-4} A/torr for M/e 40 and an M/e 36 background less than 5.0×10^{-14} cm^3 STP.

Docket Number: 92–131. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 57 FR 44360, September 25, 1992. *Reasons:* The foreign instrument provides an internal precision of 0.005 per mil for 3

bar µl samples of CO_2 and a computer-controlled carbonate preparation system for samples to 10 µg.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–4425 Filed 2–25–93; 8:45 am]

BILLING CODE 3510-DS-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 29, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On July 6, 1992, the Committee for Purchase from People who are Blind or Severely Disabled published notice (57 FR 29712) of the proposed addition to the Procurement List.

No comments were received in response to the notice. However, the Committee has been informed that the current contractor for this food service, which originally indicated that it would not compete for a new contract, now wishes to have the opportunity to bid on the next contract. The contractor is engaged in proceedings under Chapter 11 of the Federal bankruptcy code, and has no other contracts.

The Committee has concluded that despite the current contractor's dependence on its contract for this service and interest in bidding on it in the future, adding the service to the Procurement List will not have a severe adverse impact on the contractor. The Committee has reached this conclusion on the basis of information provided by the contracting office for the service and the current contractor.

The contracting officer informed the Committee that, if he had to make a competitive award to the current contractor now for the next contract period, which begins April 1, 1993, he would be unable to do so because of the firm's financial condition. He noted, however, that final authority on the matter is vested in the Small Business Administration (SBA). The Committee did not discuss the matter with SBA, which normally reviews such matters only when a competitive contract award is imminent. However, the Committee did contact the small business officer for the contracting activity, who concurred with the contracting officer's assessment. The Committee was also influenced by the fact that the current contractor has not consistently won the contract since it became available for competitive bidding. Given the existence of competition and the current contractor's financial condition, the Committee considers it unlikely that the contractor would win a bidding competition, which is a prerequisite for a determination by the contracting officer and SBA on the firm's financial capability to perform the contract, as discussed in the last paragraph.

In the Committee's judgment, the information set forth in the last two paragraphs supports a conclusion that the current contractor would not obtain the next contract for the service in question regardless of action by the Committee. Thus, the Committee has determined that the current contractor will not experience severe adverse impact as a result of this addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Food Service Attendant
Davis-Monthan Air Force Base, Arizona

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–4541 Filed 2–25–93; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a service and commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 29, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 18, 1992, January 4 and 8, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 60176, 58 FR 90 and 3263) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and commodities, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the service and commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service and commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the service and commodities.

3. The action will result in authorizing small entities to furnish the service and commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service and commodities proposed for addition to the Procurement List. Accordingly, the following service and commodities are hereby added to the Procurement List:

Commodities

Floorboard, Wood
2510–01–067–2630

Rail, Target Framing
6920–01–E02–1996
(Requirements for the U.S. Marine Corps, Parris Island, SC)

DOE This Month Newsletter (GPO Program B635–S)
7690–00–NSH–0033
(Requirements for the Department of Energy)

Smithsonian Institution Women's Council Newsletter (GPO Program B417–S)
7690–00–NSH–0037
(Requirements for the Smithsonian Institution)

VA Medical Center Newsletter (GPO Program D51–S)
7690–00–NSH–0042
(Requirements for the Department of Veterans Affairs)

Yard News (GPO Program C101–S)
7690–00–NSH–0046
(Requirements for the Department of Transportation)

Service

Janitorial/Custodial, Federal Building and U.S. Courthouse, 301 South Park Avenue, Helena, Montana.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–4540 Filed 2–25–93; 8:45 am]
BILLING CODE [illegible]

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 29, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Adhesive, Rubber
8040–00–[illegible]–6660
Nonprofit Agency: Lighthouse for the Blind, Berkeley, Missouri

Trousers, Woodland Camouflage
8415–01–184–1340 thru –1360
(300,000 pair annually)
Nonprofit Agency: Goodwill Industries of South Florida, Inc., Miami, Florida

Services

Janitorial/Custodial, U.S. Army Engineer District, Waterway Project Office, Peoria, Illinois
Nonprofit Agency: Community Workshop Training Center, Peoria, Illinois

Janitorial/Grounds Maintenance
East Totten Trail Recreation Area
Lake Sakakawea
Riverdale, North Dakota
Nonprofit Agency: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota

Beverely L. Milkman,
Executive Director.
[FR Doc. 93–4543 Filed 2–25–93; 8:45 am]
BILLING CODE [illegible]

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 29, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement list for production by the nonprofit agencies listed:

Commodities

Parka, Wet Weather
8405–01–053–9202
8405–01–001–1547
8405–01–001–1548
8405–01–001–1549
8405–01–001–1550
8405–01–001–1551
(50% of the Government's requirement)
Nonprofit Agency: ORC Industries, Inc.
LaCrosse, Wisconsin

Service

Janitorial/Custodial
Buildings 2103, 2151, 2157, 2159, 2170, 2178, 2180, 2182, 2188, 2206, 2208, 2209, 2301, 2303, 2303T, 865, 2104, 2131, 2133, 2135, 2150, 2172, 2174, 2176, 2205, 2207, 2430 and 2435
Fort Campbell, Kentucky
Nonprofit Agency: Progressive Directions, Inc., Clarksville, Tennessee.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–4542 Filed 2–25–93; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposal to Register Certain Non-Member Officials of Member Firms and to Require Consent to Jurisdiction by Certain Non-Member Parent Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposed new rule which would require that certain non-member officials of member firms and partnerships register with the Exchange and that certain non-member parent firms consent to CBT jurisdiction. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets ("Division") has determined to publish the CBT proposal for public comment. The Division believes that publication of the CBT proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before March 29, 1993.

FOR FURTHER INFORMATION CONTACT: David Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

By a letter dated February 2, 1993 and received by the Commission on February 3, 1993, the CBT submitted a proposed new Rule 230.03 pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c) which would require that certain non-member officials of members register with the Exchange and that certain non-member parent firms consent to CBT jurisdiction. The CBT submitted different versions of proposed Rule 230.03 to the Commission on two earlier occasions. The CBT originally submitted the rule to the Commission in a letter dated July 29, 1992. By letter dated August 8, 1992, the Division remitted the submission pursuant to the authority delegated by Commission Regulation 1.41a(a)(1) and raised certain questions with the CBT with respect to Rule 230.03. The Exchange responded to the questions and resubmitted the proposed rule in a letter dated September 18, 1992. The CBT has amended that most recently proposed version of Rule 230.03 and refiled the proposal in its current form.[1]

Proposed CBT Rule 230.03(a) would require each CBT member firm or partnership ("member") to designate officials as being responsible for the member's compliance with CBT rules. These designated officials would have to either become members or register with the CBT as "designated persons" who would be subject to Exchange rules as if they were members. A designated person would not be held liable for the actions of other employees, agents or independent contractors of the member if the designated person demonstrated that he or she acted in good faith and with reasonable care.

The proposed CBT Rule 230.03(a) differs from the CBT's earlier versions of this rule in two respects. First, it requires the member to select the person who will be responsible for the member's conduct rather than making such a selection solely on the basis of a person's work title. Second, the proposal's "good faith and reasonable care" liability standard is intended to provide a clearer standard for assessing a designated person's conduct.

In addition, under CBT proposed Rule 230.03(b), any non-member individual who holds more than a 25 percent financial interest in or exercises control over the management of a member firm would be required to either register as a designated person or to consent to CBT jurisdiction. Similarly, the proposal would require any non-member firm that holds more than a 25 percent financial interest in or exercises control over the management of a member firm to consent to CBT jurisdiction. Such non-member individuals and firms could receive exemption from this requirement upon showing the CBT good cause. Proposed CBT Rule 230.03(b)'s 25 percent financial interest threshold replaces the ten percent requirement of the earlier versions of Rule 230.03(b).[2]

[1] The version of CBT Rule 230.03 submitted to the Commission on September 18, 1992 was published in the **Federal Register** for a 30-day public comment period on October 7, 1992. 57 FR 46151. The comment period for that proposed version of CBT Rule 230.03 was extended until February 22, 1933 by three subsequent **Federal Register** releases. 57 FR 53887 (November 13, 1992), 58 FR 91 (January 4, 1993) and 58 FR 6388 (January 28, 1993).

[2] Under the earlier versions of CBT Rule 230.03, U.S. domiciled firms which were parent firms of member firms and which had over $100,000,000 in adjusted net capital were automatically exempted from this requirement. There is no equivalent exemption in the current proposal.

II. Request for Comments

The Commission requests comments on any aspect of the CBT's proposed new Rule 230.03 that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the proposed rule and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on February 23, 1993.

Alan L. Seifert,

Deputy Director.

[FR Doc. 93–4473 Filed 2–25–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The next committee meetings are scheduled for March 16 and 17, 1993, from 9:30 a.m. to 4 p.m. at The Herman Lay Room, The U.S. Chamber of Commerce, 1615 "H" Street, Washington, DC 20062–2000. This meeting will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: February 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–4482 Filed 2–25–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award to the Yakima Indian Nation

AGENCY: U.S. Department of Energy (DOE), Richland Field Office.

ACTION: Notice of intent to renew a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Field Office, Office of Environmental Assurance, Permits and Policy, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to renew a noncompetitive grant to the Yakima Indian Nation (YIN). Under the terms of the award, the YIN will continue to conduct activities related to the protection of YIN treaty rights which may be impacted by activities associated with DOE's environmental restoration activities at the Hanford Site. This award implements elements of the DOE Five Year Plan recognizing DOE's commitment to the participation of affected Indian tribes in the review and implementation of the Plan.

DOE has determined that the renewal on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jurisdiction of that unit of government, thereby precluding DOE provision of support to another entity. Since the award is related to agreements and treaties already made between the United States Government and the YIN, it would clearly be inappropriate for DOE to consider funding any other entity to be responsible for carrying out these activities. FY 1993 funding is expected to be approximately $800,000. Funding is also contemplated in subsequent years, at levels to be negotiated by DOE and the YIN.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy Richland Field Office, Procurement Division, P.O. Box 550, Richland, WA 99352. Telephone: (509) 376–2029.

Dated: February 19, 1993.

P.E. Rasmussen,

Acting Director, Procurement Division, Richland Field Office.

[FR Doc. 93–4536 Filed 2–25–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Decision to Sign Two Proposed Billing Credits Conservation Contracts

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent.

SUMMARY: BPA File No.: BCR–13. BPA announces its decision to sign one conservation Billing Credit contract and one Customer System Efficiency Improvement (CSEI) contract. Both contracts are with the Tillamook People's Utility District, Tillamook, Oregon.

BPA has previously signed other billing credit conservation and CSEI contracts, in addition to the contracts described in this Notice. These signed contracts were addressed in previously released **Federal Register** Notices. (57 FR 22214; May 27, 1992 57 FR 33501; July 29, 1992, and 57 FR 48792; October 28, 1992).

Tillamook People's Utility District (PUD), under its Institutional Buildings contract, will install energy conservation measures in institutional buildings. Energy conservation measures will be building specific and will include building envelope, energy management systems, water heat efficiency improvements, and interior lighting and exterior lighting. The institutional buildings are all located within the Customer's service area.

Tillamook PUD's CSEI contract will reduce energy losses by increasing the voltage from 20.8 kilovolts (kV) to 115 kV on a 6.1-mile section of an existing transmission line. The transmission line which is currently connected to a 20.8 kV distribution circuit from BPA's Hebo Substation will be reconnected to operate at 115 kV. A 115 kV connection will be to the Hebo Substation bus at one end of the transmission line and a new 115/20.8 kV Nestucca Substation will be built at the other end of the line. The work required to be performed by BPA for the 115 kV connection at Hebo Substation and the metering at Nestucca Substation will be covered by a separate reimbursable agreement. SUMMARY: BPA, pursuant to its Billing Credits Policy, as amended August 30, 1984, (49 FR 34395), and its Billing Credit Solicitation July 1990, has negotiated with the Tillamook People's Utility District for one conservation project and one CSEI project.

The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the

evaluation process for proposals, and environmental considerations. The Administrative Record includes three Appendices: Appendix A—Billing Credit Solicitation, Appendix B—Issue Resolution Log. Addendum One of the Draft Administrative Record—Customer System Efficiency Improvements (CSEI) Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits are determined. These were previously released for public review (57 FR 1161; January 10, 1992 and 57 FR 9250; March 17, 1992).

Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined for these projects. This addendum was previously released for public review (57 FR 9250; March 17, 1992).

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and Addenda.

DATES: Payment or credits will not be made or granted until 90 days after the date of a Federal Register Notice is published announcing that the contracts have been signed.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific generation billing credit contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll free 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503–230–4551,
Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503–465–6952,
Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518,
Ms. Carol S. Fleischman, Spokane District Manager, room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–3279,
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060,
Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509–662–4377,
Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, suite 400, Seattle, Washington 98109, 206–553–4130,
Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226,
Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208–334–9137,
Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c(b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839a(1) and (d). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. Subsequent to receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average MW of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts.

III. Description of the Conservation Proposals

Thirty-seven conservation proposals representing twenty-six public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Thirteen proposals were withdrawn, three utilities withdrew from participation in group-sponsored proposals, and some proposals were rejected. Conservation projects include measures in the residential, commercial, industrial, and production. Conservation projects include residential weatherization, lighting retrofit, institutional and industrial energy conservation measure, municipal water system improvements, heat pump installation, and removal of irrigation pumps. These measures reduce electric power consumption or increase production.

BPA intends to sign one conservation contract with this public utility for the following conservation project:

1. Tillamook PUD—Institutional Energy Purchase program—a conservation project to install various energy conservation measures.

IV. Description of the CSEI Proposals

Twenty-four CSEI proposals representing 30 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. CSEI projects include voltage modifications, reconductoring,

transformer replacements, and other system improvements undertaken to reduce electric power consumption or losses as a result of an increase in the efficiency of electric use, production, transmission or distribution.

BPA intends to sign one CSEI contract with this public utility for the following conservation project:

1. Tillamook PUD—Voltage Upgrade project—a CSEI project to reduce energy losses.

Both of these projects meet the qualifications for billing credits, and BPA has completed its obligations under NEPA. The customers will comply with all applicable environmental requirements in the construction of the project and during the operation phase.

V. Methodology for Determining Generation Billing Credits

The payment for billing credits (BC) for this customer will be calculated and paid monthly as follows:

As shown in the Exhibit F of the proposed contracts, the Alternative Cost, minus the Priority Firm rate, times the savings from the measures, times the cost share percentage, equals the BC.

VI. Materials Available

Copies of the Billing Credits Policy, the Administrative Record, its Appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement office. Refer to the "For Further Information Contact" section of this notice.

Issued in Portland, Oregon, on February 11, 1993.

Randall W. Hardy,

Administrator.

[FR Doc. 93–4537 Filed 2–25–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93–272–000, et al.]

Green Mountain Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 19, 1993.

Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation

[Docket No. ER 93–272–000]

Take notice that on January 26, 1993, Green Mountain Power Corporation (GMP) tendered for filing a letter confirming that GMP will limit charges for back-up power sold under the Agreement between GMP and the Vermont Department of Public Service (VDPS) after October 31, 1992 to $131.00/kw/yr.

Comment date: March 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER92–91–001]

Take notice that on January 19, 1993, Montaup Electric Company (Montaup) tendered for filing an amendment to its compliance filing in the above-referenced docket.

Comment date: March 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. EL92–41–000]

Take notice that on February 16, 1993, Nevada Power Company (NPC), tendered for filing a request for a waiver of § 35.14 of the Federal Energy Regulatory Commission's Regulations for all tariffed service provided by NPC to the City of Needles (Needles) under Rate Schedule FERC No. 41. This request is being amended to include the filing of requisite cost support for the waiver. The Primary purpose of the filing is to allow NPC to exclude the purchase power costs and energy of the Boulder Canyon Project Schedule B (Hoover B) Power from the calculation of the fuel adjustment clause for power sold to Needles. The request asks that the waiver be for all service rendered since March 1990.

NPC states that copies of the filing were served upon Needles.

Comment date: March 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Indiana Gas and Electric Company

[Docket No. ER93–339–000]

Take notice that on February 8, 1993, Southern Indiana Gas and Electric Company (Southern Indiana) tendered a Letter Agreement and request for term extension of its rate schedule FPC–29 under which it sells standby electrical power to ALCOA Generating Corporation (AGC). The change is for a one (1) year term extension only and will result in no rate increase or decrease or revenue change. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The only affected customer is the purchaser, AGC. Southern Indiana and AGC are parties to a written Letter Agreement executed on August 1, 1991, for the service, and to a written Letter Agreement dated January 13, 1993, for an extension of the term of the service for one year from January 13, 1993.

The reason for the Letter Agreement extending the term is to give the parties additional time to negotiate and file a long term rate. The Term Extension Agreement is therefore mutually beneficial.

A copy of the filing has been served upon AGC.

Comment date: March 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER93–367–000]

Take notice that on February 11, 1993, The Detroit Edison Company (Detroit Edison) filed the First Amendment to Power Supply Agreement (Amendment), which consists of an amendment to the Power Supply Agreement Between Wolverine Power Supply Cooperative, Inc. and The Detroit Edison Company, dated December 14, 1987. The Amendment is dated as of December 31, 1992, and provides for two types of changes. First, the compensation for associated administrative costs and transmission has been changed to delete a percentage adder, leaving the adder as three mills per kWhr. Second, modifications have been made to the determination of billing determinants for purchases under the Power Supply Agreement. Wolverine's generation capability has been revised in order to better match the characteristics of the units which will allow Wolverine to buy more interruptible energy when its needs are likely to be greatest and cost savings highest. Also, changes have been made to Appendix A of the Agreement to replace the fixed schedule of firm capacity purchases with one based on Wolverine's sales.

Detroit Edison requests that the proposed Amendment be made effective as of January 1, 1993, and thus requests waiver of the Commission's notice requirements for good cause shown. Detroit Edison states copies of the filing were served on Wolverine and on the Michigan Public Service Commission.

Comment date: March 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. EL93–20–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on February 16, 1993, tendered for filing pursuant to § 385.207 of the Federal Energy Regulatory Commission's

Regulations, 18 CFR 385.207 (1992), a Petition for Declaratory Order Disclaiming Jurisdiction Under the Federal Power Act. The Petition requests that the Commission issue a declaratory order disclaiming jurisdiction under Federal Power Act section 201(f) over a facilities agreement between NYSEG and the New York Power Authority.

NYSEG served copies of the filing upon the New York Power Authority.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER93–378–000]

Take notice that on February 16, 1993, Public Service Company of New Mexico (PNM) tendered for filing a new Contract for Electric Service Between PNM and the City of Gallup, New Mexico (Gallup). The new contract has a 10-year term, and replaces the existing Contract for Electric Service which terminates by its own terms effective February 20, 1993. Under the new contract, PNM will continue to supply Gallup with firm requirements electric power and energy and other electric services at wholesale.

PNM has requested that the applicable notice requirements be waived, and that the commission accept for filing the new Contract for Electric Service to be effective February 20, 1993.

Copies of the filing have been served upon Gallup and the New Mexico Public Service Commission.

Comment date: March 5, 1993, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4458 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10661–000 Michigan]

Indiana Michigan Power Co., Availability of Environmental Assessment

February 22, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the existing, unlicensed Constantine Hydroelectric Project located on the St. Joseph River in St. Joseph County, near the Village of Constantine, Michigan, and has prepared an Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff analyzed the environmental impact of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Wahsington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4487 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Notice of Availability of Data Entry Software for the FERC Form No. 2–A

February 22, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of the data entry software for the FERC form No. 2–A (DEFTA).

SUMMARY: A PC version of DEFTA, data entry software for the FERC Form No. 2–A, "Annual Report of Nonmajor Natural Gas Companies," is now available. This software is being made available to assist nonmajor pipeline companies in complying with the Commission's electronic filing requirements for the FERC Form No. 2–A.

An Order Form to request the new software and a copy of the DEFTA sublicensing agreement are available from the Federal Energy Regulatory Commission.

DATES: DEFTA, *Data Entry* software for the FERC Form No. 2–A, "Annual Report of Nonmajor Natural Gas Companies," is available on February 22, 1993.

ADDRESSES: Requests for the software and documentation should be directed to: James M. Krug, PR20.2, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., room 6010, Washington, DC 20426 (202) 208–0677.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Bill Anderson, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., room 6000–D, Washington, DC 20426, (202) 208–2221.

For information related to the execution of the software, contract: Conrad Chuang, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., room 6000–G, Washington, DC 20426, (202) 208–1043.

SUPPLEMENTARY INFORMATION: DEFTA has been developed by staff to assist nonmajor pipelines in complying with the electronic submission requirements for filing the FERC Form No. 2–A in accordance with Order Nos. 493 (53 FR 15,025 (Apr. 27, 1988)), 493–A (53 FR 30,027 (Aug. 10, 1988)), 493–B (53 FR 49,652 (Dec. 9, 1988), 493–C (54 FR 21,197 (May 17, 1989)) and 493–D (58 FR 7,985 (Feb. 11, 1993)). The new data entry software has been developed using Borland International's (BORLAND) Paradox Runtime Version 3.5, a proprietary non-interactive version of Paradox that permits users to run applications developed with Paradox. DEFTA users can perform only the operations included in DEFTA and not any of the ad hoc design interactions included in Paradox itself.

The Form No. 2–A data entry software is being made available with no licensing fees under the terms of the Commission's Paradox Runtime license. However, each nonmajor pipeline company requesting the DEFTA software will be required to sign and return to the Commission, a sublicensing agreement acknowledging BORLAND's copyright on the Paradox Runtime Version 3.5 software and absolving BORLAND of culpability for any damages that might result from the use of this software. A signed copy of the DEFTA sublicensing agreement must be on file with the Commission

before Staff will issue the software to the requesting party.

DEFTA can be run on an IBM or compatible PC with DOS 3.3 or later version and 640K of RAM. The complete software is available on one 3.5″ (1.44MB) or one 5.25″ (1.25MB) double-sided, high density diskette. A hardcopy of the instructions for installing and operating the software will also be forwarded to each person ordering the software.

The DEFTA software is available without charge. Persons requesting the software must sign a copy of the DEFTA sublicensing agreement, and return it to James M. Krug of the Commission's Staff in room 6010, 825 North Capitol Street, NE., Washington, DC 20426.

DEFTA has been tested by staff. However, if problems occur relating to the software, the Commission's staff recommends that users submit written comments as to the exact nature of the problem to Conrad Chuang, Office of Pipeline and Producer Regulation, room 6000–G, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud, dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208–2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4498 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–04540T Texas–111]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 22, 1993.

Take notice that on February 16 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg Formation, Texan Gardens (R, FB–4) Field, underlying a portion of Hildago County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area contains approximately 555 acres in Railroad Commission District No. 4 and consists of portions of the following surveys:

Portion 48—Nicolas Zamora—A–76
Portion 80—Francisco Cantu—A–570
Portion 79—Yldifonso Ramirez—A–584
Portion 78—Dionisio Ramirez—A–563

The notice of determination also contains Texas' findings that the referenced portions of the Vicksburg Formation, Texan Gardens (R, FB–4) Field meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Louis Cashell,

Secretary.

[FR Doc. 93–4490 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[FERC No. JD93–04541T Texas–112, et al.]

State of Texas; NGPA Notices of Determination by Jurisdictional Agency Designating Tight Formations

February 22, 1993.

Take notice that on February 16, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the M Sand (Docket No. JD93–04541T), R Sand (Docket No. JD93–04589T), S Sand (Docket No. JD93–04590), and T Sand (Docket No. JD93–04591T) of the Vicksburg Formation underlying portions of Hidalgo County, Texas, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The determinations represent a reduction in the area previously recommended in a pending notice of determination filed in Texas–15 Addition 3 (FERC No. JD92–02505T). The designated areas are more fully described on the attached appendix.

The notices of determination also contains Texas' findings that the referenced portions of the M, R, S and T Sands of the Vicksburg Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

JD93–04541T
Texas–112

M Sand

The area of application includes approximately 3,010 acres located in the "San Ramon" Juan Farias Grant, A–62, bounded to the west and east by lease lines and to the north and south by horizontal lines and excludes a 320 acre rectangular area in the crest of the structure around the Woods Christian #8 and #16 wells.

JD93–04589T
Texas–113

R Sand

The area of application includes approximately 1,440 acres located in the "San Ramon" Juan Farias Grant, A–62, and the "Santa Anita" Manuel Gomez Grant, A–63, bounded to the south and east by Fault F–9N (excluding the crest of the structure), and bounded to the north by the −11,200′ structural contour.

JD93–04590T
Texas–114

S Sand

The area of application includes approximately 11,700 acres located in the "San Ramon" Juan Farias Grant, A–62 and the "Santa Anita" Manuel Gomez Grant, A–63, bounded to the west, south and east by lease lines and to the north by the contact with the Eocene and which excludes two structural crests where sand thickens and improves in quality north of Fault A and Fault B.

JD93–04591T
Texas–115

T Sand

The area of application includes approximately 7,320 acres located in the "San Ramon" Juan Farias Grant, A–62, and the "Santa Anita" Manuel Gomez Grant, A–63, bounded to the west, south and east by lease lines and bounded to the north by a line which approximates the contract with the Eocene and is 120 degrees from the lease line.

[FR Doc. 93–4488 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–04539T Texas–110]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 22, 1993.

Take notice that on February 16, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the FB–D Formation, underlying a portion of McMullen County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area contains approximately 121.6 acres in Railroad Commission District No. 1 and consists of portions of the following surveys:

Section 68—Justo Corona Survey—A–112
Section 44—V. Yeager Survey—A–1230
Section 38—W.A. Lowe, Jr. Survey—A–1758
Section 69—A.B. & M. Survey—A–1448

The notice of determination also contains Texas' findings that the referenced portions of the FB–D Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4489 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–04113T Wyoming–40]

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 22, 1993.

Take notice that on February 4, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mowry/Belle Fourche Formations underlying a portion of Campbell County, Wyoming, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers Federal and Fee leases and includes all of Sections 29–30, Township 51 North, Range 75 West.

The notice of determination also contains Wyoming's findings that the referenced portion of the Mowry/Belle Fourche Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4491 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10917–002 Utah]

Wayne County Water Conservancy District; Surrender of Preliminary Permit

February 22, 1993.

Take notice that Wayne County Water Conservancy District, permittee of the Fremont River Project No. 10917, has requested that its permit be terminated. The permit was issued June 28, 1990. The project would have been located on the Fremont River in Wayne County, Utah, within the Fishlake National Forest.

The permittee filed the request on January 22, 1993, and the permit for Project No. 10917 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4493 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–218–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

February 19, 1993.

Take notice that on February 17, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP93–218–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate two delivery points originally constructed and installed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) for Southern Union Gas Company, a division of Southern Union Company (Southern Union), under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000, all as more fully set forth in the application which is open to public inspection.

El Paso proposes to operate the Waste Disposal Fuel Delivery Point and the Flying J. Commercial Development Tap in El Paso County, Texas, under the NGA for service to Southern Union, a local distribution company. El Paso states that it originally constructed these delivery taps for use exclusively in the transportation of natural gas under subpart B of part 284 of the Regulations, which restricts El Paso's use of the facilities to section 311(a) service.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4457 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

KN Energy, Inc.; Application

February 19, 1993.

Take notice that on February 9, 1993, KN Energy, Inc. (KN), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–208–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon gathering, transportation and sales service to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to an agreement with Panhandle which is on file with the Commission as Rate Schedule X–9 of KN's FERC Gas Tariff, Second Revised Volume No. 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KN states that pursuant to an agreement with Panhandle dated June 30, 1980, Panhandle is obligated to gather up to 10,000 Mcf of gas per day which KN may purchase from various sources at points in Ellis County, Oklahoma, and to transport this gas and deliver it to KN at a point of interconnection in Reno County, Kansas. KN indicates that under the terms of this agreement, Panhandle has the option to purchase from KN up to 25 percent of the gas KN delivers to Panhandle. According to KN, Panhandle has requested the termination of the referenced agreement by letter dated August 12, 1992, and has filed to abandon this agreement on December 15, 1992 in Docket No. CP93–112–000. KN states that it has agreed to Panhandle's request to terminate the above-referenced services effective October 31, 1992.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 12, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for KN to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4456 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6955–004 California]

Pan Pacific Hydro, Inc.; Surrender of Exemption

February 22, 1993.

Take notice that Pan Pacific Hydro, Inc. exemptee for the Stoney Creek Project No. 6955 located on Stoney Creek, near Weaverville, in Trinity County, California, has requested that its exemption from licensing be terminated. The exemption was issued on February 28, 1985. Construction has not started.

The exemptee filed the request on January 28, 1993, and the exemption for Project No. 6955 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4492 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–120–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

February 22, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, March 2, 1993, at 10 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of all issues raised in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4494 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–76–000]

Questar Pipeline Co.; Tariff Filing

February 22, 1993.

Take notice that Questar Pipeline Company, on February 11, 1993, tendered for filing and acceptance to be effective March 13, 1993, First Revised Sheet Nos. 65 through 67 and Original Sheet Nos. 67A through 67F to Original Volume No. 1–A of its FERC Gas Tariff.

Questar states that this filing revises Section 14.6 of the General Terms and Conditions to Original Volume No. 1–A of its FERC Gas Tariff by implementing tariff provisions to resolve current and future transportation imbalances. Questar states further that implementation of these provisions will provide a method whereby Questar may eliminate imbalances on its transportation system between the effective date of the proposed revision and the date that Questar implements the changes required by Order No. 636, *et. seq.*

Questar states that this filing was served upon its transportation customers and the Wyoming and Utah Public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules

385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4495 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–54–009]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 22, 1993.

Take notice that Trunkline Gas Company (Trunkline) on January 29, 1993, tendered for filing working papers reflecting its first annual take-or-pay volumetric surcharge reconciliation. Trunkline states that the information is submitted pursuant to Article II Section 8 of the Stipulation and Agreement in the above-captioned proceeding which requires Trunkline to submit, on an annual basis, a report of the take-or-pay volumetric surcharge amounts collection from its customers.

Trunkline states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4496 Filed 2–25–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4560–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 29, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticide and Toxic Substances

Title: Notice of Pesticide Registration by States to Meet a Special Local Need. (EPA ICR No. 0595.05; OMB No. 2070–0055). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), States and Territories are authorized to issue pesticide registrations or amendments to meet special local needs. However, the registration requirements must be consistent with Federal regulations under the FIFRA as well as sections 408 and 409 of the Federal Food and Drug, and Cosmetic Act (FFDCA). To ensure compliance with FIFRA and FFDCA, representatives of States or Territories, must submit to the Agency a completed form entitled: "Application for/Notice of State Registration of a Pesticide to Meet a Special Local Need". The form contains general information on the applicant, name and usage of the product in question, labeling requirements, and whether the product is federally registered. Official representatives of States or Territories must sign the form as well as the applicants or their official representatives. The applicants must keep records of their applications.

The EPA reviews the information on the form to decide whether to allow the State or Territory to issue a new or amended registration of a pesticide product. Also, the information on the form helps the Agency ensure compliance with Federal environmental laws.

Burden Statement: The estimated public burden for this collection of information is estimated to average 2.5 hours per response for reporting and 6 minutes per recordkeeper annually. This estimate includes the time needed to review instructions, gather the information needed, complete the form and review the collection of information.

Respondents: States and Territories.

Estimated Number of Respondents: 52 States or Territories for reporting and 550 applicants for recordkeeping.

Estimated Number of Responses Per Respondent: 11.

Estimated Total Annual Burden on Respondents: 1,375 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: February 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4529 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4560–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 29, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients. (EPA ICR No. 0597.05; OMB No. 2070–0024). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Sections 402, 406, and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) authorize the EPA to regulate the amount of pesticides that enter the diet of humans and animals. The Agency must establish tolerances (and tolerance exemptions) for pesticide residues (and new inert ingredients) found in or on raw agricultural commodities and in processed foods. To establish a tolerance, pesticide registrants submit a petition to the EPA requesting the tolerance. The registrant must furnish information to the EPA on the chemical identity and composition of the pesticide and its use pattern on crops, as well as toxicology data and data on the nature of the residue and the residue levels resulting from the proposed use pattern. The registrants must keep records of all the information submitted to the Agency. The EPA uses these data to establish tolerances and exemptions in compliance with the FFDCA.

Burden Statement: The public burden for this collection of information is estimated to average 1,480 hours per response for reporting and 104 hours per recordkeeper annually. These estimates include the time needed to review instructions, search existing data sources, gather and maintain the data needed, and review the collection of information.

Respondents: Pesticide registrants.

Estimated Number of Respondents: 579.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 917,136 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: February 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4530 Field 2–25–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4561–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 29, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Data Generation for Registration—Phases 4 and 5 of the Pesticide Reregistration Process. (EPA ICR No. 1504.02; OMB No. 2070–0107). This is a request for extension of the expiration date of a currently approved collection.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended in 1988, requires registrants of pesticides registered before November 1, 1984, to provide the EPA with additional information on their products. Under Phases 4 and 5 of the reregistration process, this additional information must provide data support for reregistration equivalent to that required of new registrations. The types of additional data are listed in 40 CFR Part 158, and fall under the following categories: Product Chemistry; Residue Chemistry; Environmental Fate; Toxicology; Reentry Protection; Spray Drift; Wildlife and Aquatic Organism; Plant Protection; Nontarget Insect; Product Performance; Biochemical Pesticides; Microbial Pesticides. Under Phase 4 and 5,special studies may also be required to support the reregistration; the studies required would be determined by the particular characteristics of the product. Registrants must maintain the data and other information submitted to the Agency in company files. The Agency uses the additional information collected under Phase 4 and 5 to determine whether a pesticide has unreasonable adverse effects on human health and the environment and whether the product should be reregistered.

Burden Statement: The estimated public burden for this collection of information is estimated to average 1,724 hours per response for reporting and 96 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the information needed, complete the form and review the collection of information.

Respondents: Pesticide Registrants.

Estimated Number of Respondents: 323.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 587,808 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: February 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–4531 Filed 2–25–93; 8:45am]

BILLING CODE 6560–50–F

[ER–FRL–4596–9]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Availability of Environmental Impact Statements Filed February 15, 1993 Through February 19, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930042, DRAFT EIS, FHW, WI, WI–TH–29 Improvement, from Chippewa Falls to Abbotoford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI , Due: April 12, 1993, Contact: Thomas J. Fudaly (608) 264–5940.

EIS No. 930043, FINAL EIS, AFS, CA, Southbranch Resource Management

Project, Harvest Timber, Road Closures and Developing Water Storage Facilities, Peavine Compartment, Tahoe National Forest, Foresthill Ranger District, Placer County, CA , Due: March 29, 1993, Contact: Slim Stout (916) 367–2224.

EIS No. 930044, DRAFT EIS, AFS, WA, OR, WA, OR, Umatilla and Malheur National Forests, Land and Resource Management Plan, Oil and Gas Leasing, Application for Permit Drilling, Several Counties, WA and OR , Due: April 12, 1993, Contact: Russell Betts (503) 276–3811.

EIS No. 930045, FINAL SUPPLEMENT, COE, MS, Upper Steele Bayou Flood Control Plan, Updated Information for Proposed Changes to the Unconstructed Portion of the Project, Boliver, Washington and Greenville Counties, MS, Due: March 29, 1993, Contact: Steve Reed (601) 631–5439.

EIS No. 930046, DRAFT EIS, AFS, CA, National Forest Trails System Management Plan, Implementation, Off-Highway Vehicle Permit, Los Padres National Forest, Santa Lucia Ranger District, San Luis Obispo County, CA , Due: May 27, 1993, Contact: K. J. Silverman (805) 681–2775.

EIS No. 930047, DRAFT EIS, VAD, OK, Oklahoma City Area National Cemetery Construction and Operation, Site Selection, Lake Arcadia, City of Guthrie or Fort Reno, Logan, Canadian or Oklahoma County, OK, Due: April 12, 1993, Contact: George Hermance (202) 233–7080.

EIS No. 930048, DRAFT EIS, AFS, CO, Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO, Due: April 12, 1993, Contact: Wandy Schmitzer (303) 879–1722.

EIS No. 920325, DRAFT EIS, DOD, Defense Evaluation Support Activity Testing and Evaluation Program for Advanced Weapons Systems, Implementation, Due: October 05, 1992, Contact: Charles Albright (505) 262–4542. Published FR 8–21–92—Officially Withdrawn by Preparing Agency.

EIS No. 930013, DRAFT SUPPLEMENT, APH, Nationwide Cooperative Animal Damage Control Program, Additional Information, Integrated Pest Management Approach, Implementation, Due: March 29, 1993, Contact: William H. Clay (301) 436–8281.

Published FR—01–22–93—Review period extended.

EIS No. 930034, DRAFT EIS, BLM, MT, Royal East Joint Venture Mineral Exploration Project, Plan of Operation Approval and Implementation, East Butte, Sweet Grass Hills, Liberty County, MT, Due: April 27, 1993, Contact: David L. Mari (406) 538–7461.

Published FR—02–12–93—Refiled per the Lead Agency's Request.

Dated: February 23, 1993.

Richard E. Sanderson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–4483 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4597–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 8, 1993 through February 12, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. DS–TVA–A82025–00 Rating LO

Control of Eurasian Watermilfoil, Implementation, Updated Information on Aquatic Plant Management Program.

Summary: EPA had no objections to continuing the subject aquatic weed control program.

Final EISs

ERP No. F–DOE–L00003–WA

Hanford Site Eight Surplus Plutonium Production Reactors Decommissioning, Implementation, Richland, WA.

Summary: EPA provided no formal written comments. EPA had no objections to the preferred alternative as it is described in the final EIS.

ERP No. F–NPS–K61121–NV

Great Basin National Park General Management and Development Concept Plans, Implementation, White Pine County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–SCS–K39033–NV

Moapa Valley Unit, Irrigation Systems, Irrigation Water Management Delivery System Improvements, Colorado River Salinity Control Program, Funding and Possible Section 404 Permit, Clark and Lincoln Counties, NV.

Summary: EPA still had environmental objections with the proposed project. The document does not fully disclose functions, values and acreages of affected wetlands or provide clear information on whether wetlands would be created and/or enhanced on the Overton Wildlife Management Area as replacement for lost wetlands. EPA recommended that the Record of Decision include additional information.

Dated: February 23, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–4469 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4561–2]

Final Decision to Grant Allied-Signal, Inc., a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Waste

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final decision on the modification of an exemption petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Allied-Signal, Inc. (Allied) of Danville, Illinois. As required by 40 CFR part 148, Allied has demonstrated to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This modification allows Allied to inject additional RCRA regulated hazardous wastes, identified by codes U211, U121, U226, and U075, through waste disposal well (WDW) No. 1 at the Danville facility. This decision constitutes a final USEPA action for which there is no administrative appeal.

Background

Allied had submitted a petition for exemption from the land disposal restrictions of hazardous waste on February 25, 1988. The exemption was granted on May 8, 1990, and allows Allied to inject RCRA hazardous waste D004, arsenic, into WDW #1. On April 15, 1991, Allied submitted a request to modify its existing petition to include six additional wastes. This action adds four new wastes to the exemption:

Genetron 11 (U121), Genetron 12 (U075), carbon tetrachloride (U211), and 1,1,1-trichloroethane (U226). Two wastes, carbon tetrachloride (D019), and chloroform (D022), are currently not restricted. Although USEPA originally proposed to finalize the exemption of these wastes without reproposal, it has reconsidered its position and determined that such a decision must be made in view of the most recent factual and technical data. Accordingly, if Allied wishes to include these two wastes in its exemption, they will need to submit a new request for modification of the exemption when a ban date for these two wastes is proposed. The public will be offered an opportunity to submit comments thereon. With respect to the currently banned wastes, after a comprehensive review of all material submitted, the USEPA has determined, as required by 40 CFR part 148, that there is a reasonable degree of certainty that Allied's injected wastes will not migrate out of the injection zone within the next 10,000 years. The injection zone at this site is the Eminence/Potosi Formation, and the immediate confining zone is the Prairie du Chien Group, at a depth of 2620 to 3332 feet below ground level. The confining zone is separated from the lowermost source of underground drinking water, located at a depth of 1700 feet, by sequences of permeable and less permeable sedimentary rocks which provide additional protection from fluid migration into underground sources of drinking water. A fact sheet containing a complete summary of the decision now being finalized was published in the **Federal Register** on September 1, 1992, at 57 FR 40028.

A public notice of the proposed decision was issued on September 2, 1992, pursuant to 40 CFR 124.10, and a public hearing was subsequently held in Danville on September 30, 1992. The public comment period expired on October 16, 1992. A number of comments were received and all comments have been considered in making the final decision. A responsiveness summary has been mailed to all commentors and included as part of the Administrative Record relating to this decision.

Conditions

General conditions of this exemption are found at 40 CFR part 148. In addition, as a condition of granting this exemption to the ban on injection of certain hazardous wastes, the USEPA requires that the following conditions be met:

1. Allied must remain in compliance with all conditions in both the Federal and State Underground Injection Control permits.

2. Allied must limit the concentration of carbon tetrachloride in the wastestream to 50 mg/l.

DATES: This action is effective as of January 26, 1993.

FOR FURTHER INFORMATION CONTACT: George Hudak, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 353–4142. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

Dale S. Bryson,

Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 93–4464 Filed 2–25–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4560–9]

New Source Review Simplification Workshop

AGENCY: Environmental Protection Agency. (EPA).

ACTION: Notice of public meeting (workshop).

SUMMARY: The EPA is considering ways to simplify the new source review (NSR) process. The EPA conducted a public workshop on August 12–13, 1992, in Chapel Hill, North Carolina, to facilitate identifying potential methods for simplifying the NSR process. Workshop participants identified issues and provided comments on proposed options for simplifying the NSR process. A summary of that workshop is included in docket A–90–37 for the NSR rulemaking.

The EPA is announcing today a second workshop on NSR simplification. The primary purpose of this second workshop is to explore in greater detail a number of the specific issues and recommendations identified on a conceptual basis at the August 1992 workshop. Agenda items to be covered at the workshop include: An in-depth discussion of the plantwide emissions limit concept for NSR applicability, the definition and treatment of environmentally-beneficial projects for NSR purposes, and a consideration of other forums (e.g., regulatory negotiation) for addressing improvements to the NSR program. Other issues may be addressed as well.

In a memorandum dated January 19, 1993, former EPA Administrator William K. Reilly decided to retain, for the present time, the Agency's so-called "top-down" policy for determining best available control technology (BACT) under the Clean Air Act's prevention of significant deterioration (PSD) program. In addition, he recommended that the Agency consider improvements in the BACT process as one element of the overall effort to simplify NSR. As a result of that recommendation, options for improving the PSD program requirement for BACT will also be discussed.

Approximately forty selected representatives from industry, environmental organizations, other Federal agencies, EPA Regions, and State/local air pollution control agencies, who are knowledgeable on the NSR rules, will be invited to serve as principle spokespersons to discuss various NSR topics. Members of the general public will also be given an opportunity to provide their comments.

The workshop is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The workshop will convene on March 17, 1993, from 8 a.m. until 5 p.m.; and March 18, 1993, from 8 a.m. until 3 p.m. Written comments may be submitted untilApril 18, 1993, to Wm. Larry Elmore, Office of Air Quality Planning and Standards, New Source Review Section (MD–15), Research Triangle Park, North Carolina 27711, telephone (919) 541–5433; telefax (919) 541–5509.

ADDRESSES: This workshop will be held at the Sheraton Inn University Center, 2800 Middleton Avenue, Durham, North Carolina 27705, telephone (919) 383–8575.

DOCKET: A summary of this workshop will also be included in docket A–90–37 for the NSR rulemaking, including all written comments submitted within 30 days of the workshop. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

PUBLIC PARTICIPATION: The workshop will be open to the public. Seating for interested members of the public will be available on a first-come, first-serve basis and will begin at 7:30 a.m. each day of the workshop.

FOR FURTHER INFORMATION CONTACT: JoAnn Allman, New Source Review Section, Mail Drop 15, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 (telephone (919) 541–5591; telefax (919) 541–5509).

Dated: February 12, 1993.

James B. Weigold,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–4396 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00133; FRL–4573–5]

Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Coordinating Committee and the four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the time and place listed below in this notice. The meetings are open to the public.

DATES: The meetings are scheduled as follows.

1. The Coordinating Committee and all the Projects will hold a meeting March 15 and 16.

2. The Projects will meet March 15 from 8 a.m. to 5 p.m. and March 16 from 8 a.m. to noon.

On March 15 there will be a plenary session on pollution prevention issues. On March 16 there will be a plenary session on "An Introduction to the Right-to-Know Computer Network."

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley Pate, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or Sarah Hammond, Office of Pollution Prevention and Toxics (TS–799), at the same address. By telephone: Shirley Pate can be reached at (202) 260–8318 and Sarah Hammond at (202) 260–7258.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of State toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States and between the States and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: The Chemical Information Management Project; the State and Tribal Enhancement Project; the Chemical Management Project; and the Lead (Pb) Project.

Dated: February 22, 1993.

Connie A. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 93–4535 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4562–1]

Toxics Data Reporting Subcommittee of the National Advisory Council for Environmental Policy and Technology; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under Pub. L. 92–563 (the Federal Advisory Committee Act), EPA gives notice of a two-day meeting of the Toxics Data Reporting Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the first meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

Discussion on the first day will focus on possible issue areas for subcommittee review. EPA is proposing that the subcommittee review the following issue areas: TRI data management, TRI program directions, and Form R elements and reporting policy (Form R is the EPA form used to report information required under section 313 of the Emergency Planning and Community Right to Know Act). The second day's agenda will focus on discussion of Form R elements and reporting policy. If time allows, the agenda for this second day will include discussion of specific definition issues associated with elements added to Form R as a result of the Pollution Prevention Act of 1990.

DATES: The public meeting will take place on March 17, 1993 from 9 a.m. to 4:30 p.m., and March 18, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: Members of the public wishing to make comments at this meeting should submit their comments, in writing, by March 8, 1993. Written comments must be submitted to: USEPA, 401 M St., SW., Washington, DC 20460, attn: Robin Cornwell, TS–799. The public meeting will be held at the Dulles Ramada Renaissance Hotel, 13869 Park Center Rd., Herndon, VA, 22071 (703–478–2900).

FOR FURTHER INFORMATION CONTACT: Robin Cornwell, Environmental Assistance Division, USEPA, Mail Stop TS–799, 401 M St., SW., Washington, DC 20460 (202–260–3544).

Dated: February 23, 1993.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 93–4534 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–4562–2]

Section 185B Report on Tropospheric Ozone

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of report for public review.

SUMMARY: The EPA announces availability of the draft report entitled The Role of Ozone Precursors in Tropospheric Ozone Formation and Control for public comment. The report is required by section 185B of the 1990 Clean Air Act Amendments (1990 Amendments). A 30-day public comment period for this draft report is to be followed by submission of a final report to Congress. The report addresses the following topics: extent of recent high ambient ozone, air quality trends, atmospheric chemistry of ozone formation and the roles of nitrogen oxides (NO_x) and volatile organic compounds (VOC) emission reductions, anthropogenic VOC and NO_x emissions, biogenic emissions, air quality measurements, ozone air quality models and data needs, the State implementation plan process for ozone, alternative fuels for motor vehicles, and availability and extent of NO_x controls.

The complete report required by section 185B includes two attachments: Attachment 1 is the National Academy of Science (NAS) report entitled Rethinking the Ozone Problem in Urban and Regional Air Pollution, which is a comprehensive review of the science underlying section 185B and related topics, and Attachment 2 is an EPA report addressing availability and extent of NO_x controls.

DATES: The draft section 185B report will be available for review and comment for 30 days after publication in the **Federal Register**.

ADDRESSES: Availability: The draft section 185B report to Congress and Attachment 2 can be received electronically by registered users of the Support Center for Regulatory Air Models Bulletin Board System by downloading the appropriate files. To register or access this electronic bulletin board, users with a personal computer should dial (919) 541–5742. Specific

information regarding access to the bulletin board and names and locations of files is available through the Source Receptor Analysis Branch (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Also, the draft report to Congress and Attachment 2 may be obtained by writing or calling Richard D. Scheffe, Source Receptor Analysis Branch (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–4650.

The NAS report entitled Rethinking the Ozone Problem in Urban and Regional Air Pollution (Attachment 1) can be purchased for (prepaid) $47.95 plus $3.00 shipping from the National Academy Press at: 2101 Constitution Avenue, NW., Washington, DC 20418; telephone (202) 334–3313.

COMMENTS: Written statements should be submitted (in duplicate if possible) to: Richard D. Scheffe, Source Receptor Analysis Branch (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–4650.

FOR FURTHER INFORMATION CONTACT: Richard D. Scheffe, Source Receptor Analysis Branch (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–4650.

Dated: February 22, 1993.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 93–4533 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–62124; FRL–4188–9]

Accredited Training Programs Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); Notice of Availability of New Edition.

SUMMARY: Effective February 26, 1993, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 26, 1993, directory, which supersedes the version released on November 30, 1992, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984–1929.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991 (56 FR 43064). EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: February 16, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–4122 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 92–287; DA 93–172]

Private Land Mobile Radio Services; Buffalo Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Buffalo (Region 55). As a result of accepting the Plan for Region 55, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 10, 1993.
Released: February 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On May 15, 1992, Region 55 (Buffalo) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the Buffalo area.

2. The Buffalo Plan was placed on Public Notice for comments on November 27, 1992, 57 FR 57456 (December 4, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Buffalo and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the Buffalo area.

4. Therefore, we accept the Buffalo Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in the Buffalo area may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–4551 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 92–286; DA 93–171]

Private Land Mobile Radio Services; El Paso Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for El Paso (Region 50). As a result of accepting the Plan for Region 50, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 10, 1993.

Released: February 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On August 5, 1992, Region 50 (El Paso) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the El Paso area.

2. The El Paso Plan was placed on Public Notice for comments on November 27, 1992, 57 FR 57456 (December 4, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for El Paso and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the El Paso area.

4. Therefore, we accept the El Paso Public Safety Radio Plan. Furthermore, licensing of the 821–824/866-869 MHz band in the El Paso area may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–4550 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 92–288; DA 93–173]

Private Land Mobile Radio Services; Iowa Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Iowa (Region 15). As a result of accepting the Plan for Region 15, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 10, 1993.

Released: February 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On June 23, 1992, Region 15 (Iowa) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Iowa.

2. The Iowa Plan was placed on Public Notice for comments on November 27, 1992, 57 FR 57456 (December 4, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Iowa and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Iowa.

4. Therefore, we accept the Iowa Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Iowa may commence immediately.

Federal Communications Commission

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–4552 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01–M

Network Reliability Council; Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the Network Reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, March 17, 1993 at 1 p.m.

ADDRESSES: Federal Communications Commission, room 856, 1919 M Street, NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic and consumer organizations to explore and recommend measures that would enhance network reliability.

The agenda for the sixth meeting is as follows. There will be a status report from the Threshold Reporting Group, and final recommendations of the Fire Prevention Focus Team, The Digital Cross Connects Systems Focus Team and the Power Systems Focus Team will be presented for Council consideration. The Council may also address other issues. After confirming the next meeting date, the Council will adjourn.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to James Keegan, the Council's designated Federal Officer, before the meeting.

For additional information, contact Robert Kimball at (202) 634–1860.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4548 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–179]

Digital Audio Radio Service Satellite System Applications Acceptable for Filing

Comments: April 9, 1993.

Replies and Oppositions: May 21, 1993.

Responses: June 25, 1993.

The Commission has found, upon initial review, that five applications for authority to construct, launch, and operate a satellite digital audio radio service (DARS) are acceptable for filing. The Commission reserves the right to return any of these applications, however, if, upon further review, any is determined to be defective or not conforming to the Commission's rules, regulations, or policies.

It also appears that the applications listed below, together with the application of Satellite CD Radio, Inc., see 7 FCC Rcd 6763 (1992), may be mutually exclusive on the grounds of electrical interference. The processing of these applications is therefore considered to be a restricted adjudicative proceeding. See 47 CFR 1.1208. Accordingly, the restrictions on ex parte communications of 47 CFR 1.1210–1.1216 apply to these applications. Specifically, all ex parte contacts are prohibited with respect to these proposals. An ex parte contact is a message (spoken or written) concerning the merits or outcome of any aspect of this proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, other than comments officially filed at the Commission or oral presentations made with an opportunity for all parties to be present.

The applications are as follows:

American Mobile Radio Corp.

File Nos. 26/27–DSS–LA–93; 10/11–DSS–P–93

Application for authority to construct, launch, and operate a satellite digital audio radio service. The system application proposes an earth station for feeder links and for telemetry, tracking, and telecommand, two geostationary satellites, and numerous mobile and fixed receivers. The American Mobile Radio Corp. (AMRC) earth station will use the 6530–6535 MHz and 6540–6545 MHz bands for uplink transmissions and space stations will use frequencies in the 2310–2360 MHz band for downlink. One space station will downlink transmissions to the contiguous United States (CONUS) using a single CONUS beam. The other space station will provide an identical CONUS beam and transmit spot beams to provide service to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. AMRC proposes to offer 15 channels of compact disc quality programming and ancillary services on a non-common carrier, subscription basis. Some channels will be offered free-of-charge to the consumer on an advertiser-supported basis.

Digital Satellite Broadcasting Corp.

File Nos. 28–DSS–LA–93; 12/13–DSS–P–93

Application for authority to construct, launch, and operate a satellite digital audio radio service. Digital Satellite Broadcasting Corp. (DSBC) proposes to select one of three system designs (Systems A, B, and C hereafter) depending on DARS rulemaking developments by the Commission. Each system consists of an earth station for feeder links and for telemetry, tracking, and telecommand, one geostationary satellite, and numerous mobile receivers. The space station will provide a single beam transmission to the CONUS and provide spot beams to Alaska, Hawaii, and Puerto Rico. Spot beams will also provide supplementary service to 28 major metropolitan areas within the CONUS. Compact disc quality audio programming and ancillary services will be offered and downlinked to individual receivers in the 2310–2360 MHz band. System A proposes to uplink transmissions in the 6500–6855 MHz band offering 16 compact disc quality channels within the CONUS beam and 16 per spot beam. System B proposes 15 compact disc quality channels comprising the CONUS beam and 15 per spot beam using the 6620–6855 MHz band for uplink transmissions. System C is capable of increasing the CONUS channel capacity of System A or B by 40% or spot beam channel capacity by 12 channels. The proposed uplink frequency band for System C is 6425–6890 MHz. DSBC proposes to offer DARS on a subscription or pay-per-use basis and requests regulation as a non-common carrier. Also proposed is a basic DARS service where programming by existing broadcasters who have purchased channel capacity from DSBC will be available to anyone without subscription who purchase receiver equipment which is compatible with the satellite DARS system.

Loral Aerospace Holdings, Inc.

File Nos. 14–DSS–P/LA–93; 15–DSS–P–93

Application for authority to construct, launch, and operate a satellite digital audio radio service consisting of an earth station for feeder links and for telemetry, tracking, and telecommand, one geostationary satellite, and numerous mobile receivers. The proposed earth station will uplink transmissions within the 7046–7052 MHz band and the space station will downlink transmissions to individual receivers in the 2310–2360 MHz band using a single CONUS beam. Loral proposes to offer 32 compact disc quality channels and information services to the CONUS on a non-common carrier, subscription basis.

Primosphere Limited Partnership

File Nos. 29/30–DSS–LA–93; 16/17–DSS–P–93

Application for authority to construct, launch, and operate a satellite digital audio radio service. The Primosphere system includes an earth station to supply feeder links and telemetry, tracking, and telecommand to two geostationary satellites. The proposed uplink band is 7025–7075 MHz and the space stations will downlink transmissions within the 2310–2360 MHz band to portable, mobile and fixed receivers. Two space stations, each transmitting identical CONUS beams, will offer 23 compact disc quality channels and six non-music channels. Primosphere proposes to provide free, over-the-air, advertiser-supported audio programming.

Sky-Highway Radio Corp.

File Nos. 31/32–DSS–LA–93; 18/19–DSS–P–93

Application for authority to construct, launch, and operate a satellite digital audio radio service. Sky-Highway's design includes an earth station for feeder links and for telemetry, tracking, and telecommand using uplink frequencies of 7046–7052 MHz, and two geostationary satellites for downlink to numerous fixed, mobile, and portable receivers on frequencies within the 2310–2360 MHz band. The Sky-Highway system will provide subscription satellite delivered compact disc quality audio services and ancillary information throughout the CONUS. One space station will provide service to the western half of the CONUS and the other will provide service to the eastern half. The two space stations will provide separate programming consisting of ancillary services and 15 channels of compact disc quality audio. Terrestrial rebroadcast is proposed to enhance reception in limited areas, as needed, using existing frequency assignments in the AM broadcast band. Use of current silent AM stations is proposed for the initial in-band infrastructure.

Comments or petitions regarding these applications may be filed on or before April 9, 1993. Replies and Oppositions may be filed on or before May 21, 1993. Responses may be filed on or before June 25, 1993.

For further information, contact Rosalee Chiara at (202) 634–1781 or Ronald Repasi at (202) 634–1841.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4549 Filed 2–25–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Alabama State Docks Department/ Ceres et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement Nos.: (1) 224–200738, (2) 224–200739, (3) 224–200740

Title: (1) Alabama State Docks Department/Ceres, Gulf Incorporated Terminal Agreement, (2) Alabama State Docks Department/River Terminals, Inc. Terminal Agreement, (3) Alabama State Docks Department/ Coastal Cargo Alabama Terminal Agreement

Parties: Alabama State Docks Department ("Department") and, (1) Ceres Gulf Incorporated, (2) River Terminals, Inc., (3) Coastal Cargo Alabama

Filing Party: E. G. Browning, Jr., General Manager, General Cargo Marketing and Operations, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633

Synopsis: The Agreements permit the individual parties to perform cargo and freight handling service at the Department's facilities at the Port of Mobile.

Dated: February 22, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4440 Filed 2–25–93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Pretest of the Survey of Homeless Persons Who Use Services (HPWUS)—Recipient Survey—This component of the pretest will test the utility of the recipient questionnaire in obtaining information on the characteristics of homeless persons who use services:

Respondents: individuals;
Number of Respondents: 90;
Frequency of Response: once;
Average Burden per Response: 37 minutes;
Estimated Burden: 56 hours.
OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 10, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93–3974 Filed 2–25–93; 8:45 am]

BILLING CODE 4153-04-M

Administration for Children and Families

Intent to Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Intent to Reallot Fiscal Year 1993 Funds, pursuant to section 142(b) of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which are not available to the Federated States of Micronesia and the Republic of Marshall Islands (formerly part of the Trust Territories of the Pacific Islands) under the terms of the Compact of Free Association under the Protection and Advocacy program. Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1993 should notify Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, in writing within thirty (30) days of the date of this promulgation. This notice is hereby given in accordance with section 142(b) of the Act.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley on (202) 690–7220.

The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1993 REALLOTMENT

	Protection & advocacy	Reallotment	Revised allotment
Total	$22,506,496	$0	$22,506,496
Alabama	401,707	1,755	403,462
Alaska	214,470	937	215,407
Arizona	275,023	1,201	276,224
Arkansas	234,775	1,025	235,800
California	1,772,774	7,803	1,780,577

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1993 REALLOTMENT—Continued

	Protection & advocacy	Reallotment	Revised allotment
Colorado	232,245	1,019	234,264
Connecticut	221,578	868	222,546
Delaware	214,470	937	215,407
Dist. of Columbia	214,470	937	215,407
Florida	596,321	3,919	600,240
Georgia	516,099	2,255	518,354
Hawaii	214,470	937	215,407
Idaho	214,470	937	215,407
Illinois	816,112	3,566	819,678
Indiana	453,861	1,983	455,844
Iowa	343,808	1,664	344,668
Kansas	214,470	937	215,407
Kentucky	371,715	1,624	373,339
Louisiana	425,164	1,857	426,861
Maine	214,470	937	215,407
Maryland	291,843	1,274	292,817
Massachusetts	389,617	1,702	391,319
Michigan	741,120	3,236	744,356
Minnesota	317,043	1,385	318,428
Mississippi	287,507	1,256	288,763
Missouri	413,327	1,806	415,133
Montana	214,470	937	215,407
Nebraska	214,470	937	215,407
Nevada	214,470	937	215,407
New Hampshire	214,470	937	215,407
New Jersey	453,945	1,983	455,928
New Mexico	214,470	937	215,407
New York	1,239,120	5,414	1,244,534
North Carolina	565,619	2,471	568,090
North Dakota	214,470	937	215,407
Ohio	895,298	3,912	899,210
Oklahoma	267,411	1,168	268,579
Oregon	225,313	984	226,297
Pennsylvania	956,299	4,179	960,478
Rhode Island	214,470	937	215,407
South Carolina	323,424	1,413	324,837
South Dakota	214,470	937	215,407
Tennessee	445,344	1,946	447,290
Texas	1,265,303	5,529	1,270,832
Utah	214,470	937	215,407
Vermont	214,470	937	215,407
Virginia	432,700	1,890	434,590
Washington	327,348	1,430	328,778
West Virginia	241,256	1,054	242,310
Wisconsin	405,123	1,770	406,893
Wyoming	214,470	937	215,407
American Samoa	114,741	501	115,242
Guam	114,741	501	115,242
Puerto Rico	726,132	3,173	729,305
Virgin Islands	114,741	501	115,242
Northern Mariana Islands	114,741	501	115,242
Trust Territories consists of:			
Palau	16,855	0	16,855
Micronesia	63,268	−63,268	0
Marshall Islands	34,618	−34,618	0

Dated: February 23, 1993.

Will Wolstein,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 93–4538 Filed 2–25–93; 8:45 am]

BILLING CODE 4130–01–M

Cancellation of the President's Committee on Mental Retardation Meeting

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Cancellation of the President's Committee on Mental Retardation (PCMR) meeting scheduled to be held on March 29–30, 1993.

SUMMARY: On Thursday, February 11, 1993, the PCMR published a Notice in the **Federal Register** (58 FR 8053) to announce that an Executive Committee Meeting will be held on Monday, March 29, 1993, from 8 a.m.–9 a.m., and a Full Committee Meeting will be held on March 29–30, 1993 from 9:30 a.m. to 5 p.m. The meeting was open to the public and was to take place at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. (FR Doc. 93–3200).

Due to the change in Administration, the PCMR meeting has been cancelled until further notice. Please direct all questions concerning the cancellation to the contact person listed below:

Contact: James J. Colarusso, Wilbur J. Cohen Bldg., room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: February 22, 1993.

James J. Colarusso,

Acting Executive Director, PCMR.

[FR Doc. 93–4539 Filed 2–25–93; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 92N-0455]

Plasmatek of Victoria, Inc.; Revocation of U.S. License No. 1113

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1113) and the product license issued to Plasmatek of Victoria, Inc., for the manufacture of Source Plasma. In a letter to FDA dated July 8, 1992, the firm voluntarily requested the revocation of its establishment and product licenses and thereby waived an opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 1113) and product license became effective September 15, 1992.

FOR FURTHER INFORMATION CONTACT: S. J. Whidden, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-295-9075.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 1113) and the product license issued to Plasmatek of Victoria, Inc., 1702 North Navarro St., Victoria, TX 77901, for the manufacture of Source Plasma. The current mailing address for Plasmatek of Victoria, Inc., is in care of Plasmatek Management, Inc., 609 Hepburn, Suite 101, Jupiter, FL 33458.

FDA conducted an inspection of Plasmatek of Victoria, Inc., located in Victoria, TX, from May 12 through May 16, 1992. The inspection and concurrent investigation revealed serious deviations from the applicable Federal regulations and biologics standards established in the license that constituted a danger to health. These deviations included, but were not limited to, the following: (1) Failure to maintain a complete record of unsuitable donors, so as to preclude product distribution from such individuals (21 CFR 606.160(e)); (2) failure to adequately determine donor suitability, in that medical history questions were routinely shortened or eliminated on repeat donors (21 CFR 640.63(a)); (3) failure to record accurate donor vital signs in the donor record file that allowed a donor with abnormal results to donate blood (21 CFR 606.160(b)(1) and 640.63(c)(1), (c)(2), (c)(3), and (c)(4)); and (4) failure to thoroughly and carefully prepare the donor's phlebotomy site by a method that gives maximum assurance of sterility, in that donors were routinely allowed to prepare their own venipuncture site (21 CFR 640.64(e)).

FDA determined that the deviations from Federal regulations were serious and presented a danger to health, warranting suspension pursuant to 21 CFR 601.6(a). In a letter to Plasmatek of Victoria, Inc., dated June 10, 1992, FDA detailed the violations noted above and suspended the firm's establishment and product licenses for Source Plasma manufacture. In a letter to FDA dated July 8, 1992, Plasmatek of Victoria, Inc., requested voluntary revocation of its license and thereby waived its opportunity for a hearing under 21 CFR 601.5(a). In a letter dated September 15, 1992, FDA acknowledged voluntary revocation of the establishment license (U.S. License No. 1113) and product license of Plasmatek of Victoria, Inc., for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocations on file under the docket number found in brackets in the heading of this document in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1113) and the product license issued to Plasmatek of Victoria, Inc., for the manufacture of Source Plasma were revoked, effective September 15, 1992.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: February 16, 1993.

Gerald V. Quinnan,

Director, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

[FR Doc. 93-4437 Filed 2-25-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93F-0037]

Kalsec, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kalsec, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrahydro-isohumulones and hexahydro-isohumulones derived from hop alpha acids, as flavoring agents in beer.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2A4339) has been filed by Kalsec, Inc., P.O. Box 511, Kalamazoo, MI 49005-0511. The petition proposes that the food additive regulations in § 172.560 *Modified hop extract* (21 CFR 172.560) be amended to provide for the safe use of tetrahydro-isohumulones and hexahydro-isohumulones derived from hop alpha acids, as flavoring agents in beer.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 19, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-4436 Filed 2-25-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0057]

"Guidance Document for Arsenic in Shellfish"; "Guidance Document for Cadmium in Shellfish"; "Guidance Document for Chromium in Shellfish"; and "Guidance Document for Nickel in Shellfish"; Availability

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of four guidance documents on elemental contaminants in shellfish entitled "Guidance Document for Arsenic in Shellfish," "Guidance Document for Cadmium in Shellfish,"

"Guidance Document for Chromium in Shellfish," and "Guidance Document for Nickel in Shellfish." FDA developed these documents in response to requests from various State public health and environmental agencies. They address contaminants that are of particular concern to State authorities. The information provided in the guidance documents should assist State and local decisionmakers in addressing the local or regional public health significance of contaminants in seafood. The information will be useful in determining the need to issue consumption advisories or to close harvesting waters when seafood harvested from particular waters is found to be contaminated. FDA is developing additional guidance documents to address other contaminants that are of public health significance that may be present in shellfish and finfish.

ADDRESSES: Submit written requests for single copies of these four guidance documents (free of charge) to the Food and Drug Administration, Policy Guidance Branch (HFS–416), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The four guidance documents are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory M. Cramer, Center for Food Safety and Applied Nutrition (HFS–416), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3888.

SUPPLEMENTARY INFORMATION: The purpose of the Federal Food, Drug, and Cosmetic Act (the act) is to ensure a safe and wholesome food supply. The act and other related statutes, including the Public Health Service Act, provide the regulatory framework under which FDA assesses the effects of environmental contaminants on the safety of consumption of fish and shellfish.

Under the act, FDA may establish a formal tolerance limiting the level in food of an added poisonous or deleterious substance that is required in the production of the food or that cannot be avoided by current good manufacturing practice. However, when toxicological data are scanty or conflicting, when additional data are being developed, or when other conditions are rapidly changing, FDA may choose not to establish a tolerance. Nevertheless, it may still be appropriate to control exposure to a contaminant. In such circumstances, FDA may consider developing guidelines or regulatory limits. In either case, tolerances, regulatory limits, and guidelines are typically designed for use on a national basis, when the agency judges that a national problem exists with respect to a particular contaminant.

In the present instance, however, the substances that are the subject of these guidance documents are primarily of local concern, and FDA has not developed tolerances, regulatory limits, or guidelines for them. In the absence of a reference for assessing the public health significance of contaminants found in local seafood, local and State officials have repeatedly sought the advice of FDA on these matters.

These guidance documents are intended for use by public health officials as a tool for assessing the public health significance of contaminants found in local seafood. Each of the documents provides public health information about the contaminant in question, how to sample shellfish in preparation for testing for that contaminant, procedures for analyzing for the contaminant, consumption and exposure assessments, and a summary of the toxicological and adverse effects of the contaminant. Guidance is also provided on how tolerable levels of shellfish consumption or contamination might be determined.

FDA plans to develop additional guidance documents to address other contaminants present in shellfish and finfish that are of public health significance.

Dated: February 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–4475 Filed 2–25–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Announcement of Proposed Definition, Post-Residency Activities and School Implementation Efforts for Primary Care Loan Program

SUMMARY: The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992) amend the Health Professions Student Loan (HPSL) Program, now found in sections 721–735 of Title VII of the Public Health Service (PHS) Act, to include a new section 723. Section 723 established the Primary Care Loan (PCL) Program. Under this program, schools of medicine and osteopathic medicine must use their new and existing HPSL funds to make loans only to students who are committed to careers as generalist physicians (i.e., family physician, general internist, general pediatrician, osteopathic general practitioner) or a specialist in preventive medicine/public health, except that previous HPSL borrowers may be funded through completion of their educational program.

These changes do not affect the HPSL program at schools of dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine. However, for schools of medicine and osteopathic medicine, the changes significantly alter the existing HPSL program by: (1) Restricting HPSL to borrowers with a commitment to these primary health care disciplines; and (2) imposing penalties on schools that do not have a primary health care emphasis. Effectively, the law transforms the HPSL fund at schools of medicine and osteopathic medicine into a PCL fund. First-time HPSL student borrowers at schools of medicine and osteopathic medicine must agree: (A) To enter and complete a residency training program in primary health care not later than 4 years after the date on which the student graduates from such school; and (B) to practice in such care through the date on which the loan is repaid in full. This notice will describe a proposed definition of "residency training program in primary health care", proposed acceptable and unacceptable post-residency activities, and proposed school implementation efforts for implementing section 723(a).

EFFECTIVE DATE: The program elements described in this notice are proposed for use in fiscal year (FY) 1993 and would become effective with loans made to medical and osteopathic medical students who are first-time borrowers from the loan fund on or after July 1, 1993. Public comments are invited on the proposed definition, post-residency activities and school implementation efforts. The comments will be considered prior to the publication of the final notice.

Proposed Definition of "Residency Training Program in Primary Health Care"

Section 723(d)(5) defines the term "primary health care" as family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice. The adjective "general" is not used as a modifier of internal medicine and

pediatrics training programs. Residency programs that focus on training generalists are not separately approved by the Accreditation Council for Graduate Medical Education (ACGME) or listed in the National Resident Matching Program based on uniform criteria. Thus, it is difficult to discern in any given year which programs should be considered as "general". General internal medicine and general pediatrics "practice" is ultimately defined by decisions residents make following the completion of their 3-year residency programs.

"Residency Training Program in Primary Health Care" is defined as a 3-year residency program in allopathic family medicine, internal medicine, pediatrics, or preventive medicine approved by the ACGME, or a 2–3 year osteopathic residency program in internal medicine, pediatrics, preventive medicine or general practice (including an internship which emphasizes family medicine) approved by the American Osteopathic Association. Two year osteopathic general practice programs that have not as yet converted to 3 years would also be considered primary health care residency programs for purposes of the PCL program.

The allopathic and osteopathic programs are described separately to make it clear that approved osteopathic internal medicine, pediatrics and preventive medicine programs are included.

The osteopathic profession is converting its residency training programs from two years of post-doctoral training to three years of training. The authorizing legislation does not differentiate based on length of training. Therefore, both are acceptable training programs for the maintenance of physician eligibility under the PCL program.

Proposed Post-Residency Activities

Acceptable activities: Residency graduates who will qualify to retain the lower interest rate on a PCL include:

(1) Generalist physician graduates of a 3-year program in family practice, internal medicine or pediatrics who enter clinical practice;

(2) Preventive medicine graduates who practice, in the primary health care fields of clinical preventive medicine, occupational medicine, or public health;

(3) Senior (chief) residents in one of the residency programs defined above;

(4) Faculty, administrators, or policy makers who maintain certification in one of the primary health care disciplines;

(5) Family physicians and internists who obtain a certificate of added qualification in geriatrics; and

(6) Internists and pediatricians who enter training to qualify for a certificate of added qualification in adolescent medicine or board certification in adolescent pediatrics.

Unacceptable activities: Physicians who will forfeit their eligibility for the lower interest rate on a PCL include those who:

(1) Enter medical or pediatric subspecialty training (e.g., cardiology, gastroenterology);

(2) Enter training to qualify for a certificate of added qualification in sports medicine;

(3) Receive subspecialty certification; or

(4) Enter a non-primary health care specialty (e.g. obstetrics/gynecology, surgery, dermatology, radiology).

In establishing this loan program, Congress has recognized that access to affordable quality health care is dependent on a better balance between primary care and other specialties. Today only one-third of all physicians are in the generalist disciplines and less than one percent are in preventive medicine. At the same time the Nation has a growing supply of medical specialists which hinders efforts to expand access to primary care and control costs. Therefore, Congress has determined that these loan funds should be awarded on a targeted basis that supports the Nation's need for more generalist or public health physicians.

The authorizing legislation requires PCL participants to practice in primary health care through the date on which the loan is repaid in full. The above list of post-residency activities is an attempt to cover most of the general categories of potential activities that loan recipients are likely to be engaged in and to thereby indicate how all activities will be evaluated. The principal criterion used to assess questionable activities was the likelihood that physicians engaged in the activity will have a long-term commitment to the delivery and promotion of primary health care services through practice, teaching, administration or policy activities.

Noncompliance by Student

If a PCL recipient fails to enter and complete a primary health care residency training program within 4 years of graduation, and to practice primary health care until the loan is repaid in full, the following penalties, as provided in section 723(a)(3), will apply:

(1) The balance due on the loan will be immediately recomputed from the date of issuance at an interest rate of 12 percent per year, compounded annually; and

(2) The recomputed balance must be repaid not later than 3 years after the date on which the borrower fails to comply with the agreement.

Schools will be responsible for monitoring the borrower's compliance with the primary health care practice requirement, and for imposing the interest penalty on those who fail to comply with the terms of the agreement. Section 723(b) establishes conditions which must be met by the school to avoid penalties under the PCL program.

Proposed School Implementation Efforts

In addition to the statutory requirements for schools, each participating school will be expected to establish a systematic process for the selection of the medical students to receive the PCLs. At a minimum, the process should include (1) a committee with representation from each of the primary health care disciplines and (2) a system to fully educate students about each of these careers and to evaluate candidates in relation to their commitment to generalist and preventive medicine practice and other pertinent factors.

Participants in the PCL program will be required to submit a report of their PCL implementation efforts by December 31, 1993. This basic information is required to provide assurance to the Secretary that the program is being managed in a manner which is consistent with the goals of the authorizing legislation. A medical school committee which includes all the primary health care specialties is viewed as the preferred method of identifying the most appropriate loan recipients. This information collection requirement is subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act.

The performance of a school in implementing the PCL program will be determined ultimately by the percentage of students who maintain their commitment to primary health care practice through the life of the loan. Today, 90 percent of the family medicine graduates enter generalist practice, but only 60 percent of pediatricians and 30 percent of internal medicine graduates remain in primary care practice. Therefore, successful schools will have to assure that students are fully informed about what it means to select primary health care practice,

particularly in internal medicine and pediatrics.

Additional Information

Interested persons are invited to comment on the proposed definition, post-residency activities and school implementation efforts. The comment period is 30 days. All comments received on or before March 29, 1993 will be considered before the final definition, post-residency activities and school implementation efforts are established. Written comments should be addressed to: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Student Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: February 19, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–4477 Filed 2–25–93; 8:45 am]

BILLING CODE 4160–15–M

Title II, Section 224 of the Public Health Service Act Protect Certain Health Care Professionals From Liability; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authorities to the Administrator, Health Resources and Services Administration (HRSA), by the Assistant Secretary for Health on January 19, 1993, the Administrator, HRSA, has delegated to the Director, Bureau of Primary Health Care (BPHC), without authority to redelegate, the authorities for the Protection of Certain Health Care Professionals From Liability under title II, section 224, of the Public Health Service Act, as amended. This delegation excluded the authority to promulgate regulations and to submit reports to Congress.

This delegation was effective on February 11, 1993.

Dated: February 11, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–4478 Filed 2–25–93; 8:45 am]

BILLING CODE 4160–15–M

SOCIAL SECURITY ADMINISTRATION

Finding Regarding Foreign Social Insurance or Pension System; Estonia

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding Foreign Social Insurance or Pension System—Estonia.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 401(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(A) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(B) permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority, the Director of the Office of International Policy has approved a finding that Estonia, beginning August 20, 1991, has a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death, but that under this social insurance system, citizens of the United States who are not citizens of Estonia and who leave Estonia, are not permitted to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside that country.

Accordingly, it is hereby determined and found that Estonia has in effect, beginning August 20, 1991, a social insurance system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)), but not the requirements of section 202(t)(2)(B) of the Act (42 U.S.C. 402(t)(2)(B)).

This finding also affects the application of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4)(A) and (B)). That section provides that, subject to certain residency requirements of section 202(t)(11), section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under Social Security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding with respect to section 202(t)(2) herein, the provisions of subparagraphs (A) and (B) of section 202(t)(4) do not apply to citizens of Estonia beginning August 20, 1991.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

Dated: February 18, 1993.

James A. Kisski,

Director, Office of International Policy.

[FR Doc. 93–4497 Filed 2–25–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–20]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD;

(1) Its intention to make the property available for use to assist the homeless;

(2) Its intention to declare the property excess to the agency's needs; or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; (202) 272–0520; (This is not a toll-free number).

Dated: February 19, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Correction: Property Numbers—419130001, 419130002, 419210001, 419040001, 419220001 were published 2/12/93 and 2/19/93 as suitable/available. The Department of Energy has authorized disposal of those properties, therefore, these properties are not available.

Title V, Federal Surplus Property Program Federal Register Report for 02/26/93

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 604, 605, 612, 611, 613–618
Point Arena Air Force Station
Mendocino County, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010237–189010246
Status: Unutilized
Comment: 1,232 sq. ft. each; stucco-wood frame; most recent use—housing.

Bldg. 21180
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Location: Hwy 1, Hwy 246, Coast Rd., PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130384
Status: Unutilized
Comment: 7,487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dedeco Co: Guam GU 69612–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 69612–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121

Mountain Home Air Force Base
Main Avenue
Elmore County, ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3,375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2,146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1,546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2,593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2,069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2,069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4,017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3,674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7,216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6,070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5,898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1,944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6,171 sq. ft., 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldgs. 51–62
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010791–189010802
Status: Excess
Comment: 1,134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63–67
Calumet Air Force Station
Calumet Co.: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010803–189010807
Status: Excess
Comment: 1,306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 2,394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72–89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010811–189010828
Status: Excess
Comment: 1,168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6,751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16

Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3,000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldgs. 9–13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010835–189010839
Status: Excess
Comment: 1,056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5–8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010840–189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2,340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5,314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4,528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.

Bldgs. 216–224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010847–189010855, 189010859, 189010861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garages.

Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3,603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 31–35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010867–189010871
Status: Excess
Comment: 36 sq. ft. each; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 36–37, 39, 201–207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010872–189010874, 189010879–189010885
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4,314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8,960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3,744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Land (by State)

California

80 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2 (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB Hinckley Co: San Bernardino CA 92407
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9,290 sq. ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldg. 21185
Vandenberg Air Force Base
Santa Barbara County, CA 93437
Location: Hwy 1, Hwy 246; Coast Road, PT SAL Road; Miguelito CYN
Landholding Agency: Air Force
Property Number: 189240054
Status: Unutilized
Comment: 168 sq. ft., 1 story wood frame, needs rehab., most recent use—storage.

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13,404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1,000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010061
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Texas

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft., possible asbestos, most recent use—supply store, needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5,815 sq. ft., 1 story corrugated iron, possible asbestos, needs rehab, most recent use—recreation, workshop.

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.

Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

Land (by State)

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernardino CA 92408–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres+.11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Suitable/To Be Excessed

Nevada

Bldgs. 300–302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120001–189120003
Status: Unutilized
Comment: 1573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 303–306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120004–189120007
Status: Unutilized
Comment: 2750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 307–310, 318, 320–322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120008–189120011, 189120019, 189120021–189120023
Status: Unutilized
Comment: 2170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 311–317, 319, 324–326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120012–189120018, 189120020, 189120025–189120027
Status: Unutilized
Comment: 2424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331–341, 343, 345–346, 348–353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120028–189120047
Status: Unutilized
Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 sq. ft., one story, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 3027, 3029–3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120052, 189120054–189120065
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force

Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

Bldg. 101
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 102–106
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110096–189110100
Status: Excess
Comment: 988 sq. ft. each; 3 bedroom single family housing units; needs rehab; off-site use only.

Bldgs. 107, 110–111
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110101–189110103
Status: Excess
Comment: 768 sq. ft. each; 2 bedroom single family housing units; needs rehab; off-site use only.

Bldgs. 112–116, 123–129
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110104–189110108, 189110115–189110121
Status: Excess
Comment: 1510 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldgs: 117, 119–122
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110109, 189110111–189110114
Status: Excess
Comment: 1595 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110110
Status: Excess
Comment: 2295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110122
Status: Excess
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldgs. 142–145
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110123–189110126
Status: Excess
Comment: 624 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Bldgs. 201–218
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110127–189110144
Status: Excess
Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221–229
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110145–189110153
Status: Excess
Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Land (by State)

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55 acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 203, 113
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010296–189010297
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010298–189010300
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 11–230, 21–116, 34–616, 43–010, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010303–189010308
Status: Unutilized
Reason: Secured Area; Contamination.

Bldg. 103, 110, 112–115, 118, 1001, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010309–189010319
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010320–189010329
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 103–105, 110, 114, 202, 204–205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010330–189010339
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: Isolated and remote; Arctic environment

Alabama

48 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189010002–189010005, 189110165–189110167, 189120231–189120232, 189130335–189130336, 189130370–189130381, 189140010–189140014, 189220005–189220014
Status: Unutilized
Reason: Secured Area

22 Bldgs.
Gunter AFB

Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Numbers: 189010011–189010013, 189010015–189010016, 189010019–189010020, 189010022, 189040853–189040855, 189130349, 189140001–189140009, 189140021
Status: Underutilized
Reason: Secured Area

Bldg. 1435–1436, 1440–1441
Maxwell Air Force Base
Mimose Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189030220–189030223
Status: Unutilized
Reason: Floodway; Secured Area

Bldg. 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189130369
Status: Unutilized
Reason: Secured Area; Within airport runway clear zone

Bldgs. 906–907, 931, 933–934
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189240013–189240017
Status: Unutilized
Reason: Secured Area; Extensive Deterioration

Bldgs. 143, 839
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189240018–189240019
Status: Unutilized
Reason: Secured Area

Bldgs. 603, 315, 314, 301, Gunter Annex
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36411–3112
Landholding Agency: Air Force
Property Numbers: 189310042–189310045
Status: Unutilized
Reason: Secured Area; Extensive Deterioration

Water Supply Bldg.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189310046
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

Recreation/Library
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189310047
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

BE Storage Shed
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189310048
Status: Unutilized
Reason: Secured Area

Data Processing Bldg.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189310049
Status: Unutilized
Reason: Secured Area

Youth Center
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189310050
Status: Unutilized
Reason: Secured Area

Arizona

Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force
Property Number: 189040856
Status: Unutilized
Reason: Secured Area

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 392 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535–5496
Landholding Agency; Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldgs. 152, 159, 384 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Numbers: 189010190–189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 707, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Numbers: 189010193, 189010196–189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. 100–101, 116, 202
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010233–189010236
Status: Unutilized
Reason: Secured Area

Bldg. 201–204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Numbers: 189010546–189010549
Status: Unutilized
Reason: Secured Area

Bldgs. 1009, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010558, 189010561–189010563
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 1100–1101, 1103–1107, 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010567–189010569, 189010571–189010574, 189010579–189010580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130360
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Bldgs. 8006, 11443, 1016–1021, 1027, 1031, 6105, 8111, 8140–8141, 9341, 10312, 10314, 10503, 5431, 8117, 13009, 13012, 13013, 13015, 13221
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130362, 189140029, 189210011–189210020, 189210023–189210028, 189230005–189230006, 189230014–189230017, 189230019
Status: Unutilized
Reason: Secured Area

Bldg. 10748
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force

Property Number: 189210029
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldgs. 11195, 10004, 10702, 10704, 10706, 10710, 10726, 10742, 16104
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Numbers: 189220017, 189230007–189230013, 189230020
Status: Underutilized
Reason: Secured Area

Bldgs. 1791, 7001, 7002, 7008, 13028
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Numbers: 189240044–189240047, 189240050
Status: Unutilized
Reason: Secured Area

Bldgs. 10721, 11026
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Numbers: 189240048–189240049
Status: Underutilized
Reason: Secured Area

30 Bldgs.
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Numbers: 189310011–189310025, 189310027–189310041
Status: Unutilized
Reason: Secured Area

Colorado

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora Co: Arapahoe CO 80011–9599
Location: Demolished 7 Dec. 90.
Landholding Agency: Air Force
Property Number: 189010249
Status: Unutilized
Reason: Secured Area

Bldg. 291
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Location: South of 6th Avenue and east of Rosemary Court.
Landholding Agency: Air Force
Property Number: 189010250
Status: Excess
Reason: Secured Area

Delaware

Bldg. 230
Dover Air Force Base
436 ABG/DE
Dover AFB Co: Kent DE 19902–
Landholding Agency: Air Force
Property Numbers: 189140017
Status: Unutilized
Reason: Secured Area

Bldgs. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Numbers: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

Florida

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area

Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area

Facility 01322
Cape Canaveral AFS
1301 Flight Control Road
Cape Canaveral Co: Brevard FL 32920
Landholding Agency: Air Force
Property Number: 189220004
Status: Unutilized
Reason: Secured Area

Bldgs. 1176, 1179, 659
Patrick Air Force Base
Co: Brevard FL 32935
Landholding Agency: Air Force
Property Numbers: 189240029–189240031
Status: Unutilized
Reason: Secured Area; Extensive Deterioration

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Elmore County, ID 83648
Landholding Agency: Air Force
Property Numbers: 189030004–189030006
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Elmore County, ID 83648
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material; Within airport runway clear zone

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area

Bldg. 3670, 503, 869, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Numbers: 189010248, 189010725, 189110087, 189130347
Status: Unutilized
Reason: Secured Area

Indiana

Bldg. 520, 309, 301
Grisson Air Force Base
Grisson Co: Miami IN 46971–
Landholding Agency: Air Force
Property Numbers: 189010183–189010184, 189010186
Status: Underutilized
Reason: Secured Area

Bldg. 219, 307
Grissom Air Force Base
Grissom AFB Co: Miami IN 46971–5000
Landholding Agency: Air Force
Property Numbers: 189110084–189110085
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 707
Parallel to NE–SW runway & alternate runway
Grissom AFB Co: Miami IN 46971–
Landholding Agency: Air Force
Property Number: 189130334
Status: Underutilized
Reason: Within airport runway clear zone; Secured Area

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110
Landholding Agency: Air Force
Property Number: 189310008
Status: Underutilized
Reason: Secured Area

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110
Landholding Agency: Air Force
Property Number: 189310009
Status: Underutilized
Reason: Fuel Pump Station

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110
Landholding Agency: Air Force
Property Number: 189310010
Status: Underutilized
Reason: Pump Station

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Underutilized
Reason: Secured Area

Massachusetts

Bldg. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Numbers: 189010438, 189040002
Status: Underutilized
Reason: Secured Area

Maryland

Bldg. 4–5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–

Landholding Agency: Air Force
Property Numbers: 189010261, 189010264
Status: Unutilized
Reason: Secured Area

Bldg. 3427
Andrews Air Force Base
3427 Pensylvania Avenue
Andrews AFB Co: Prince George's MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area

Maine

Bldg. 5200, 6200, 6100
Loring Air Force Base
Limestone Co: Aroostook ME 04750–
Landholding Agency: Air Force
Property Numbers: 189010541–189010543
Status: Unutilized
Reason: Secured Area

Michigan

Bldg. 560, 5658, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Numbers: 189010522–189010533
Status: Unutilized
Reason: Secured Area

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Sewage treatment and disposal facility

Bldg. 99–100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010831–189010832
Status: Excess
Reason: Water Well

Bldg. 118, 120, 168
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010875–189010876, 189010878
Status: Excess
Reason: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Pump lift station

Bldg. 69
Calumet Air Force Station
Calument Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Sewer pump facility

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Water pump station

Minnesota

Bldgs. 641, 643, 646, 665
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111–4098
Landholding Agency: Air Force
Property Numbers: 189310003–189310006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Missouri

Bldgs. 42, 45–47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Numbers: 189010726, 189010728–189010731
Status: Unutilized
Reason: Secured Area

Montana

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Other environmental

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Other environmental

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010078
Status: Unutilized
Reason: Other environmental—friable asbestos; Secured Area

Bldg. 1500, 1502
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010079–189010080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Other environmental

Bldg. 627, 677
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010722–189010723
Status: Unutilized
Reason: Secured Area; Other environmental

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area; Other environmental

Nebraska

Offutt Communications Annex-#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Former sewage lagoon

Bldgs. 637, 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524
Landholding Agency: Air Force
Property Numbers: 189230021–189230022
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 31, 311, 401, 416, 417, 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113
Landholding Agency: Air Force
Property Numbers: 189240007–189240012
Status: Unutilized
Reason: Secured Area

New Hampshire

Bldg. 132, 317, 343, 439
Pease Air Force Base
Pease AFB Co: Rockingham NH 03803–
Landholding Agency: Air Force
Property Numbers: 189010536–189010539
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area

Bldgs. 21, 80, 98, 324, 598, 801, 802, 1095, 1096, 321, 75115
Holloman Air Force Base
Co: Otero NM 88330
Landholding Agency: Air Force
Property Numbers: 189240032–189240042
Status: Unutilized
Reason: Secured Area

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 272, 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Numbers: 189140022–189140023
Status: Excess
Reason: Secured Area

Facilities 814, 808, 807

Griffiss Air Force Base
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Numbers: 189230001–189230003
Status: Excess
Reason: Within airport runway clear zone; Secured Area

Facilities 126, 127, 135, 137, 138, 173, 261, 308, 1200
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Numbers: 189240020–189240028
Status: Unutilized
Reason: Secured Area

Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211–7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Secured Area; Extensive deterioration

North Carolina

Bldg. 187
Pope Air Force Base
317 GSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area

Ohio

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705–5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area

South Dakota

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706
Landholding Agency: Air Force
Property Numbers: 189210001–189210002
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

Bldg. 645
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–
Location: West of Lubbock
Landholding Agency: Air Force
Property Number: 189010210
Status: Excess
Reason: Secured Area

Bldg. 02106
Reese Air Force Base
Lubbock Co: Lubbock TX
Landholding Agency: Air Force
Property Number: 189210005
Status: Unutilized
Reason: Secured Area

Utah

Bldg. 789
Hill Air Force Base
Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area

Washington

21 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Numbers: 189010139–189010159
Status: Unutilized
Reason: Secured Area

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Wyoming

Bldg. 31, 34, 37, 284, 385, 803
F. E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Numbers: 189010198–189010203
Status: Unutilized
Reason: Secured Area

Bldgs. 802, 804–806, 2780, 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240001–189240006
Status: Unutilized
Reason: Secured Area

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: isolated and remote area; Arctic environment

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road;
Comment: Isolated and remote area; Arctic coast

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: Isolated and remote area; Arctic coast

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area

New Mexico

Facility 75100

Holloman Air Force Base
Co: Otero NM 88330
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area

[FR Doc. 93–4294 Filed 2–25–93; 8:45 am]

BILLING CODE 4310-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–39903]

Termination of Desert Land Classification and Opening Order; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates desert land classification N–39903 in its entirety and provides for opening the land to the operation of the public land laws, including location under the mining laws.

EFFECTIVE DATE: Termination of the classification is effective on February 26, 1993. The segregation terminated on February 11, 1993, the date on which the relinquishment of the entry was accepted.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785–6530.

SUPPLEMENTARY INFORMATION: The lands affected by this action are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N., R. 64 E.,
Sec. 18, NE¼, E½W½.

The area described contains 320 acres in White Pine County, Nevada.

The classification was made pursuant to the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, *et seq.*). Entry to the land was allowed on November 5, 1985, and on that date the lands became segregated from all other forms of appropriation under the public land laws, including location under the mining laws. By letter dated November 24, 1988, the entryman relinquished the entry. The relinquishment was accepted on February 11, 1993, and on that date the segregation terminated. Pursuant to Section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classification N–39903 is hereby terminated in its entirety.

At 10 a.m. on February 26, 1993, the lands will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 26, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on February 26, 1993, the lands will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Billy R. Templeton,
State Director, Nevada.

[FR Doc. 93–4445 Filed 2–25–93; 8:45 am]

BILLING CODE 4310-HC-M

[ID–030–03–4210–05; IDI–2A581]

Realty Action; Recreation and Public Purposes Act Classification, Bannock County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act classification; Idaho.

SUMMARY: The following Public lands in Bannock County, Idaho have been examined and found suitable for classification for lease to the Gate City Sport Shooters Association under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Gate City Sport Shooters Association proposes to use the lands for a public shooting range.

Boise Meridian, Idaho

T. 5 S., R. 35 E.
Sec. 31, NE¼NW¼
Containing 40 acres.

The lands are not needed for Federal purposes. Lease of the lands is consistent with current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. A lease term not to exceed twenty years.

Detailed information concerning this action is available for review at the Pocatello Resource Area Office, Bureau of Land Management, Federal Building, 250 S. 4th Ave., suite 172, Pocatello, Idaho 83201.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing under the Recreation and Public Purposes Act and the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: February 19, 1993.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 93–4484 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–GG–M

[CA–942–5700–10]

Filing on Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 10 N., R. 8 E.,—Metes-and-bounds survey of Tract 48, (Group 1121) accepted November 16, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 12 N., R. 6 E.,—Metes-and-bounds survey of Tract 52, (Group 1121) accepted November 16, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 9 S., R. 24 E.,—Dependent resurvey and survey, (Group 1120) accepted November 13, 1992, to meet certain administrative needs of the U.S. Forest Service, Sierra National Forest.

T. 38 N., R. 11 W.,—Metes-and-bounds survey of Tract 45, (Group 1121) accepted November 16, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 40 N., R. 11 W.,—Metes-and-bounds survey of Tract 46, (Group 1121) accepted November 16, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 24 and 25 N., R. 10 E.,—Dependent resurvey, subdivision of section 6, and metes-and-bounds survey, (Group 1047) accepted November 24, 1992, to meet certain administrative needs of the U.S. Forest Service, Plumas National Forest.

T. 15 N., R. 8 W.,—Dependent resurvey and subdivision of section 29, (Group 1125) accepted December 1, 1992, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

San Bernardino Meridian, California

T. 1 S., R. 3 E.,—Dependent resurvey, and subdivision of section 12, (Group 1091) accepted December 2, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 1 S., R. 4 E.,—Dependent resurvey and subdivision of section 18, accepted December 2, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats will be placed in the open files in the BLM, California State Office, and will be available to the public as a matter of information. Copies of the survey plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Dated: February 18, 1993.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–4443 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 19, 1993.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and adjusted 1892 meanders of the Clearwater River in section 25, and the subdivision of section 25, Boise Meridian, Idaho, Group No. 834, was accepted February 12, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey on the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: February 19, 1993.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–4444 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 19, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 5 South, Range 18 East, Boise Meridian, Idaho, Group No. 852, was accepted February 11, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: February 19, 1993.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor of Idaho.

[FR Doc. 93–4441 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Trail of Tears National Historic Trail; Route Selection and Availability of the Comprehensive Management and Use Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of route selection and availability of the Comprehensive Management and Use Plan.

SUMMARY: The Trail of Tears National Historic Trail was established as a component of the National Trails System Public Law 100–192, December 16, 1987. The National Trails System Act as amended, 82 Stat. 919, 16 U S.C.

1241, *et seq.* provides a period of two complete fiscal years following the establishment of the trail for preparation of a Comprehensive Management and Use, including selection of the trail route. Planning for the trail included a significant amount of public input, and was completed in June 1992.

Notice is hereby given that a route for the Trail of Tears National Historic trail has been selected, and maps of the route can be found in the Comprehensive Management and Use Plan and Comprehensive Management and Use Plan Map Supplement. The official set of trail maps will be kept at the administrative office of the Trail of Tears National Historic Trail, given below. The maps are available for inspection upon request. As research findings indicate changes in trial locations or branches, or the need to add sites to or delete them from the inventory, then such changes will be officially documented in that office. Notice of changes to the national historic trail route will be published in the **Federal Register**, in conformance with the National Trails System Act. Copies of the comprehensive plan have been sent to agencies, organizations, and individuals who participated in the preparation of the plan, and to others who may potentially become involved in developing and managing portions of the trail. Copies of the comprehensive plan or map supplement are available from the National Park Service, Southwest Region, Branch of Long Distance Trails, P.O. Box 728, Santa Fe, New Mexico 87504–0728.

FOR FURTHER INFORMATION CONTACT: David Gaines, Chief, Branch of Long Distance Trails, at the address given above; telephone (505) 988–6888.

SUPPLEMENTARY INFORMATION: The National Park Service is responsible for overall administration of the Trail of Tears National Historic Trail. However, actual development and management of the trail will be accomplished through many cooperating Federal, state, and local agencies, private trail organizations, and individual landowners.

Through preparation of the Comprehensive Management and Use Plan, and based on Congressional direction, a route has been selected for the Trail of Tears National Historic Trail that retraces, as closely as possible, the route used by 16,000 Cherokee Indians who were forcibly removed in 1838–39 from their homeland in the southeast to Indian Territory, generally located within the corridor described in the final report of the Secretary of the Interior entitled "Trail of Tears" and dated June 1986. In accordance with section 3(C) of the National Trails System Act, components of the trail selected on Federal lands are established as initial Federal protection components. Where the route crosses Federal lands, it will be developed in accordance with agreements to be established between the National Park Service and the Federal managing agencies. Non-Federal portions of the trail may be certified as official trail components in accordance with a voluntary certification procedure established by the comprehensive plan.

The Authorities of the National Trails System Act provide for three types of components of a National Historic Trail which can be termed "trail sites," "trail segments," and "motor routes." Development of National Historic Trails need not be continuous, making it possible to designate historic sites as trail sites even though there is no opportunity to include them in developed cross-country trail routes. Cross-country trail routes following the historic route make up trail segment components of the National Historic Trail. The final development category—motor routes—utilizes roads and highways that closely follow the historic route. Motor routes serve to connect trail sites and trail segments, where the opportunity for cross-country trail development is not possible, and provide an auto tour route system to visit trail sites. Each of these components will be appropriately marked with the official trail marker as they are certified, in accordance with the comprehensive management and use plan.

Dated: January 22, 1993.

John Cook,

Regional Director, Southwest Region.

[FR Doc. 93–4438 Filed 2–25–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

The parent corporation is Ryder System, Inc. a Florida corporation. Its address is 3600 NW 82nd Avenue, Miami, FL 33166.

The names of all wholly owned subsidiaries which will participate in the operations, and the state of incorporation, are as follows:

Aeronautical Improvements Corporation.	Florida.
Airplane Things, Inc	Texas.
APS Technical Specialities, Inc.	California.
ATE Management & Service Company, Inc.	Delaware.
ATE Management of Duluth, Inc.	Minnesota.
Automotive Rail Handling, Inc.	Michigan.
Aviall Far East, Inc	Florida.
Aviation Sales Company, Inc.	Florida.
Aviation Sales leasing Company, Inc.	Florida.
B&C, Inc	Michigan.
Blazer Truck Lines, Inc .	Michigan.
F. J. Boutell Driveaway Co., Inc.	Michigan.
Cape Area Transportation System, Inc.	Massachusetts.
Carrier Support, Inc	Delaware.
Central Virginia Transit Management Company, Inc.	Virginia.
Commercial Carriers, Inc	Michigan.
Complete Auto Transit, Inc.	Michigan.
Consolidated Convoy Company.	Oregon.
Convoy Company	Oregon.
E/H Service Corporation	Wisconsin.
Far East Freight, Inc	Florida.
Fleet Carrier Corporation	New York.
Fleet Carrier Dealers Service, Inc.	Michigan.
H.N.S. Management Company, Inc.	Connecticut.
Inventory Locator Service, Inc.	Tennessee.
Jackson Public Transportation Company, Inc.	Mississippi.
Janeville Auto Transit Company.	Delaware.
M&G Convoy, Inc	New York.
Managed Logistics System, Inc.	Delaware.
Merrimack Valley Area Transportation Co., Corp.	Massachusetts.
Metro Service Corp	Wisconsin.
Mid-South Transportation Management, Inc.	Tennessee.
Murry Recon, Inc	New York.
National Trucking Company.	Delaware.
Network Sales, Inc	Tennessee.
Network Vehicle Central, Inc.	Florida.
9755 S.W. 67 Avenue, Inc.	Florida.
Old Dominion Transit Management Company.	Virginia.
OSHCO, Inc	Florida.
Parking Management of Southwest Virginia, Inc.	Virginia.
Port Terminal Transport, Inc.	California.
QAT Inc	Florida.
RMX, Inc	Delaware.
RSI Acquisition Corp	Delaware.

RSI Aviation, Inc	Florida.
RSI Purchase Corp	Delaware.
Ryder Airline, Inc	Delaware.
Ryder Airline Service, Inc.	Delaware.
Ryder Automotive Carrier Group, Inc.	Florida.
Ryder Automotive Operations, Inc.	Florida.
Ryder Aviall, Inc	Florida.
Ryder Aviation Sales International, Inc.	Florida.
Ryder Capital Corp., Inc	Florida.
RYDERCORP	Florida.
RYDERCORP, Inc	Delaware.
Ryder Dedicated Capacity, Inc.	Tennessee.
Ryder Dedicated Logistics, Inc.	Delaware.
Ryder Driver Leasing, Inc.	Florida.
Ryder Energy Distribution Corporation.	Florida.
Ryder Equity, Inc	Nevada.
Ryder Finance, Inc	Florida.
Ryder Freight Broker, Inc.	Virginia.
Ryder Move Management, Inc.	Oregon.
Ryder Realty, Inc	Delaware.
Ryder Relocation Services, Inc.	Florida.
Ryder Services Corporation.	Florida.
Ryder St. Louis Redevelopment Corporation.	Missouri.
Ryder Student Assistance Fund, Inc.	Rhode Island.
Ryder Student Transportation Services, Inc.	Florida.
Ryder Support, Inc	Florida.
Ryder Truck Rental, Inc	Florida.
Ryder Truck Rental-One Way, Inc.	Delaware.
Ryder Truckstops, Inc	Florida.
South Florida Mortgage Group, Inc.	Florida.
Southwestern Virginia Transit Management Co., Inc.	Virginia.
Summit Industries, Inc	Delaware.
Terminal Service Co	Washington.
Transit Contractors, Inc	California.
Transit Management Company of Laredo.	Texas.
Transit Management of Alexandria, Inc.	Virginia.
Transit Management of Charlotte, Inc.	North Carolina.
Transit Management of Connecticut, Inc.	Connecticut.
Transit Management of Danville, Inc.	Illinois.
Transit Management of Decatur, Inc.	Illinois.
Transit Management of Durham, Inc.	North Carolina.
Transit Management of Great Falls, Inc.	Montana.
Transit Management of Hamilton, Inc.	Ohio.
Transit Management of Jamestown, Inc.	New York.
Transit Management of Monroe County, Inc.	Michigan.
Transit Management of St. Joseph, Inc.	Missouri.
Transit Management of Spartanburg, Inc.	South Carolina.
Transit Management of Tucson, Inc.	Arizona.
Transit Management of Washoe, Inc.	Nevada.
Transit Management of Waukesha, Inc.	Wisconsin.
Transport Support, Inc.	Delaware.
Transportation Management of Tennessee, Inc.	Tennessee.
Westside Corporate Center, Inc.	Florida.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4522 Filed 2–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32247]

Fox River Valley Railroad Corp., Trackage Rights Exemption

Chicago and North Western Transportation Company (C&NW) has agreed to grant overhead trackage rights to Fox River Valley Railroad Corporation (FRVR) over 1.7-mile rail line between milepost 4.00 at Duck Creek, WI, and milepost 5.70 at Howard, WI. FRVR will use these trackage rights to reach the outer limits of the Industrial Park, at Howard, WI,[1] to serve the interests of its customer, GenCorp, located at the Village of Howard Industrial Park, in Howard, WI. The trackage rights became effective February 11, 1993.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik and Alicia M. Serfaty, Hopkins & Sutter, 888 Sixteenth Street, NW., suite 700, Washington, DC 20006.

[1] FRVR has access to the Industrial Park by virtue of its status as successor in interest to a Construction Agreement between C&NW and the Escanaba & Lake Superior Railroad dated November 27, 1985, which provided for joint access to the Industrial Park.

[2] To qualify for an exemption under 49 CFR 1180.2(d), a railroad must file a verified notice of the transaction with the Commission at least a week before the transaction is consummated. See 49 CFR 1180.4(g). In this proceeding, the parties filed their verified notice of exemption on January 4, 1993, and indicated that the transaction had been consummated on December 18, 1992. However, counsel for the parties has clarified that December 18, 1993, was the date the parties executed their agreement, not the consummation date. According to counsel, the parties did not consummate the transaction prior to the effective date.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: February 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4523 Filed 2–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32245]

Genesee & Wyoming Industries, Inc. Continuance in Control Exemption

Genesee & Wyoming Industries, Inc. (GWI), a noncarrier, has filed a notice of exemption to continue in control of Willamette & Pacific Railroad, Inc. (W&P) upon the latter's becoming a carrier. W&P, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32245, *Willamette & Pacific Railroad, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company* for W&P: (1) To lease and operate approximately 183.82 miles of rail line owned by Southern Pacific Transportation Company (SPT) in the State of Oregon; and (2) to acquire incidental overhead trackage rights over a 41.2-miles SPT line in the State of Oregon. W&P expected that transaction to be consummated on or about February 15, 1993.

GWI also controls six class III rail carriers that operate in the States of New York, Louisiana, and Pennsylvania: (1) Genesee & Wyoming Railroad Company; (2) Dansville and Mount Morris Railroad Company; (3) Rochester & Southern Railroad, Inc.; (4) Louisiana & Delta Railroad, Inc.; (5) Buffalo and Pittsburgh Railroad, Inc.; and (6) Allegheny & Eastern Railroad, Inc. GWI indicates that: (1) W&P and the other railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect W&P with any of the other railroads in GWI's corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock

Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: William P. Quinn, Rubin Quinn Moss and Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106.

Decided: February 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4524 Filed 2–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 103)]

Missouri Pacific Railroad Co.—Abandonment—In Douglas, Champaign and Vermilion Counties, IL. (Westville and Jamaica Branches); Notice of Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon 9.2 miles of rail line between Villa Grove (milepost 164.20) and Broadlands (milepost 155.00) in Douglas and Champaign Counties, IL.

A certificate will be issued authorizing abandonment unless by March 15, 1993, the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than March 8, 1993. The following notation must be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

This notice supersedes the previous notice issued in this proceeding and published at 57 FR 58027 (Dec. 8, 1992) with respect to the Villa Grove-Broadlands segment.

Decided: February 22, 1993.

By the Commission, Chairman McDonald, Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Chairman McDonald voted to deny abandonment authority over the Villa Grove-Broadlands segment. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4588 Filed 2–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32133]

Union Pacific Corporation, Union Pacific Railroad Co. and Missouri Pacific Railroad Co.—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Co.; Notice of Findings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 5.

SUMMARY: The Commission is accepting for consideration the application filed January 29, 1993, the Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR),[1] Chicago and North Western Holdings Corp. (Holdings) and Chicago and North Western Transportation Company (CNW) (collectively applicants) seeking Commission approval and authorization under 49 U.S.C. 11343–45 for the common control of UP and CNW.

DATES: Written comments must be filed with the Commission no later than April 14, 1993, and second lists of protective conditions must be filed by May 14, 1993. Responsive applications must be filed no later than June 1, 1993. For further information, see the attached procedural schedule.[2]

ADDRESSES: Unless otherwise indicated, an original and 20 copies of all documents must be sent to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 3213, Washington, DC 20423.

Two copies of all pleadings in this proceeding must be sent to: Interstate Commerce Commission, room 2118, Office of Proceedings, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, 901 Fifteenth Street NW., Washington, DC 20005.

Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue NW., P.O. Box 7566, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610; Marc Lerner, (202) 927–6289; or Thomas Shick, (202) 927–5257 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: On January 29, 1993, pursuant to 49 U.S.C. 11343–45 and our rules at 49 CFR 1180.4, applicants filed this application for approval of the common control of UP and CNW. We are accepting for consideration the control application filed in this proceeding.

Upon the effectiveness of a final order of the Commission authorizing control, UP Rail, Inc. (UP Rail), a wholly-owned subsidiary of UPC, proposes to convert its nonvoting common stock in Holdings (now approximately 29.5 percent)[3] into voting common stock and to vote that stock on any appropriate occasions thereafter. Applicants seek control authority to ensure that this stock can be converted and voted because, even if this step itself would not result in the common control of UP and CNW, subsequent transactions in Holdings stock by third parties could cause UP to fall passively into a control situation in the future. UPC also wishes to be free to increase its stock ownership (directly or otherwise) in Holdings. Moreover, implementation of marketing and operating coordinations between UP and CNW to achieve efficiency savings and service improvements that might otherwise be discouraged by concerns over triggering unauthorized control could then occur. And, although UPC has no present plans to do so, it wishes to be free to acquire (directly or thorough UP Rail or other subsidiaries) majority, or even 100 percent, ownership of Holdings if market conditions and business considerations warrant. According to applicants, the application demonstrates that such ownership, and the full integration of UP and CNW, would clearly be in the public interest.

UPRR operates approximately 6,000 miles of main line and approximately 3,000 miles of branch line in the western United States. The main lines stretch from the Pacific Coast ports and terminals of Seattle, Portland, Oakland and Los Angeles to Missouri River gateways including Kansas City and Omaha/Council Bluffs. Routes over main lines extend from the Pacific

[1] UPRR and MPRR will subsequently be referred to collectively as "UP."

[2] The Commission adopted this schedule previously in its Decision No. 4 in this proceeding, served January 28, 1993.

[3] Blackstone Capital Partners L.P. owns 26.8 percent; Donaldson, Lufkin & Jenrette Capital Corporation owns 5.1 percent; CNW management owns 4.2 percent; and public stockholders own the remainder.

Northwest through Washington, Oregon, Idaho and Utah to Ogden and Salt Lake City, from Northern California through Nevada and Utah to Ogden and Salt Lake City, and from Southern California through Nevada and Utah to Ogden and Salt Lake City. UPRR's double-track main line connects Omaha/Council Bluffs at the east with Ogden and Salt Lake City at the west and runs through Nebraska, Colorado, Wyoming and Utah.

MPRR operates approximately 8,000 miles of main line and 2,000 miles of branch line in the midwestern and southwestern United States. While UPRR's lines basically form east-west routes, MPRR's lines basically form east-west routes, MPRR's lines principally form north-south routes. MPRR's lines connect the major Midwest gateways of Chicago, Omaha, St. Louis, Memphis and Kansas City with the principal ports and the terminals of New Orleans and Lake Charles, LA, and Galveston, Houston, Beaumont, Corpus Christi, Brownsville and Laredo, TX. MPRR also serves important interior Texas points including Dallas, Forth Worth, San Antonio, Austin, Midland/Odessa and El Paso. Its lines extend into the grain producing regions of Kansas and Nebraska and as far west as Pueblo, CO.

CNW operates approximately 2,500 miles of main line and 3,100 miles of branch line in the upper midwestern United States. CNW's east-west main line between Chicago and Fremont/Omaha/Council Bluffs connects the UP system with the lines of various major eastern railroads. CNW's lines also run from Chicago to Milwaukee, and thence to Winona, WI and (via trackage rights over Wisconsin Central Ltd.) Duluth/Superior, and from Duluth/Superior to Minneapolis/St. Paul (via trackage rights over Burlington Northern Railroad Company) and thence to Des Moines and Kansas City. A CNW line extends from a point near Green Bay, WI, to Ishpeming and Escanaba, MI, while CNW's Milwaukee-to-St. Louis line passes through Chicago. CNW has a considerable network of branch lines in Iowa and southern Minnesota, and a line extending from northwestern Nebraska into South Dakota. Service was discontinued on CNW's line from Norfolk, NE, to Chadron, NE, in November 1992.

In addition, Western Railroad Properties, Incorporated, a wholly-owned subsidiary of CNW, transports low-sulphur coal in unit trains over a railroad approximately 200 miles in length, from the southern Powder River Basin in Wyoming to South Morrill, NE, where it interchanges with UP. These trains are principally destined for electric generating plants, the majority of which are located in the Southwest and Midwest. CNW also provides commuter service in the Chicago area under a purchase-of-services contract with Metropolitan Rail (METRA).

According to applicants, the consolidation of UP and CNW would be almost entirely an end-to-end transaction, which would create new single-line routes and increase, not reduce, competition. UP and CNW currently handle transcontinental traffic, via their interline connection at Fremont, NE. Other important joint-line routes involve north-south routes between the Upper Midwest and the South Central United States, as well as the handling of coal traffic originating in the Powder River Basin of Wyoming. UP and CNW both have physical connections between the four mid-continent gateway cities that they both serve (Chicago, St. Louis, Kansas City and Omaha/Council Bluffs). However, they add that a consolidation would not have any material parallel aspects and that UP and CNW provides exclusive rail service only at the point of Norfolk, NE.

According to applicants, no new security issuances or other material, or new financial arrangements are contemplated in connection with the conversion and voting of UP Rail's common stock in Holdings or the implementation of agreed-upon marketing and operating coordinations between UP and CNW. Should UPC purchase (directly or through UP Rail or other subsidiaries) additional Holdings common stock, such purchases would be made with available resources, financed through stock or borrowings. Applicants indicate that UPC has substantial additional borrowing capacity. Should a full acquisition of Holdings or CNW by UPC ever occur, such an acquisition might be carried out in a variety of ways, including a stock-for-stock exchange, a cash tender offer or an asset purchase.

For purposes of the pro forma financial statements depicting the effects of a full integration of the railroads, applicants have presented two alternatives: (a) A stock-for-stock exchange of UPC stock for Holdings stock on the basis of illustrative prices ($58.00 per share and $20.50 per share, respectively); and (b) purchases of Holdings common stock at $20.50 per share in cash, for a total cost of $638.4 million, funded through 10-year debt at a 7 percent interest rate. According to applicants, a stock-for-stock exchange would have no effect on UPC's fixed charges. Borrowings in connection with the purchase of Holdings' stock for cash would add some $89.8 million to UPC's fixed charges in each of the 10 years of the debt amortization period that has been assumed. Applicants believe that UPC could readily absorb these additional fixed charges. The per-share prices used in these calculations are, for Holdings, the price used in its 1992 stock offering and, for UPC, a recent share price.[4]

Applicants add that, subsequent to the approval of common control, should UPC or any affiliate acquire additional stock of Holdings (other than through purchases on the open market or arm's-length transactions with other principal owners) or enter into any other control-related transaction involving the acquisition or modification of securities of Holdings or CNW, it will request a finding from the Commission regarding the fairness of the terms of such transaction in accordance with *Schwabacher* v. *United States*, 334 U.S. 192 (1948), or a declaratory order that no such finding is required.

As noted, the application was filed under 49 U.S.C. 11343 *et seq.* and 49 CFR part 1180. We are accepting the application for consideration because it complies with the applicable regulations, waivers, and requirements. We reserve the right, however, to require the filing of supplemental information from applicants or any other party or individual, as necessary to complete the record in this matter.

In our Decision No. 4, served January 28, 1993, we adopted an expedited procedural schedule and we have attached it here to give notice to all interested persons. All of the filing deadlines are in accordance with the governing regulations as modified by the expedited procedural schedule. We advise applicants and all other parties to this proceeding that, particularly because of the accelerated schedule we have adopted, they must strictly comply with all requirements. If questions arise concerning an interpretation of a requirement, they may contact the Commission's Office of Proceedings at 202–927–5610 for assistance. See 49 CFR 1180.4(c)(6)(iii).

The application and accompanying exhibits are available for inspection in the Public Docket Room, room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the application.

[4] Applicants state that these prices are for illustrative purposes only and are not meant to indicate the present or future value of Holdings or UPC.

Comments must be filed no later than April 14, 1993. An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Two additional copies of all pleadings in this proceeding must be filed directly with the Office of Proceedings, room 2118, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation (DOT), the Attorney General of the United States, Antitrust Division, (DOJ), and applicants' representatives. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Written comments shall include:

1. The docket number and title of the proceeding;
2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
3. The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;
4. A statement on whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;
5. A list of all information sought to be discovered from applicant carriers;
6. An initial list of specific protective conditions sought;
7. An analysis of the issues the Commission must consider in this proceeding. Particular attention should be given to our general policy statement for the merger or control of at least two class I railroads, 49 CFR 1180.1, the statutory criteria, and antitrust policy.

Because we have determined that this proceeding constitutes a major transaction within the meaning of our rail consolidation rules, 49 CFR part 1180, railroads filing written comments must also submit at that time a statement of whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission and a general statement of what that application is expected to include. THIS WILL BE CONSIDERED A PREFILING NOTICE WITHOUT WHICH THE COMMISSION WILL NOT ENTERTAIN APPLICATIONS FOR THIS TYPE OF RELIEF.

Comments from the Secretary of Transportation and Attorney General must be filed by April 29, 1993. Parties seeking to modify any protective conditions specified in their initial comments must file a second list of protective conditions no later than May 14, 1993. Parties shall not be permitted to seek any protective conditions other than those requested in their final list.

Parties seeking to file responsive applications must do so no later than June 1, 1993. Responsive applications include inconsistent applications, petitions for inclusion, or any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). Parties should contact Marc Lerner (202) 927–6289 to obtain docket numbers for their responsive applications.

Petitions for waiver or clarification by responsive applicants shall be filed no later than April 14, 1993. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding.

Discovery may begin immediately. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal voluntarily to supply information will be treated as an objection to the request for discovery. Responses must be served upon all parties of record, and five copies of those responses must be concurrently filed with the Commission.

We plan to conclude the evidentiary phase of this proceeding by January 11, 1994.[5] The initial decision will be waived, and the determination of the merits of the application(s) will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

Any traffic studies and data submitted in opposition to the primary application must use calendar year 1991 data and, where relevant, use depreciation accounting, in order to be comparable with the evidence submitted by applicants. Evidence supporting protestants' responsive applications must use 1991 as the base year, and the depreciation accounting system and applicants' evidence in opposition to the responsive applications must use 1991 and depreciation accounting.

We advise protestants that, if they seek to have the primary application denied, or seek conditions if approved, because they contend their ability to provide essential service and/or competition will be harmed, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in Finance Docket No. 32133 is accepted for consideration.
2. The parties shall comply with all provisions as stated above.
3. This decision is effective on February 26, 1993.

Decided: February 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

Procedural Schedule

January 29, 1993—Primary application filed.
February 26, 1993—Commission notice of acceptance of primary application published.
April 14, 1993—Comments on primary application (except DOJ, DOT) due.
April 29, 1993—DOJ, DOT comments on primary application due.
May 14, 1993—Second lists of protective conditions due.
June 1, 1993—Responsive applications due; opposition to primary application due.
July 1, 1993—Commission notice of acceptance of responsive applications published.
August 30, 1993—Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due.
September 29, 1993—Responses to government parties' evidence due; rebuttal in support of responsive applications due.
October 20–26, 1993—Hearing on all evidence; witnesses to be cross-examined only to the extent specific need is shown in order to resolve material issues of disputed fact (see note below).
November 15, 1993—Opening briefs due.
December 6, 1993—Reply briefs due.
January 11, 1994—Oral argument.
March 30, 1994—Final decision.

Notes: Immediately upon each evidentiary filing, the filing party shall

[5] Under the procedural schedule we have adopted, the end of the evidentiary phase will be the day of oral argument. Technically, under our schedule, that day would fall on Sunday, January 9, 1994; however, we will tentatively schedule oral argument for the following Tuesday instead.

place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and shall make its witnesses available for discovery depositions. Access to documents subject to protective order shall be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications shall begin immediately upon their filing.

The Administrative Law Judge to whom this matter is assigned shall have the authority: (1) To revise the schedule as may appear necessary; and (2) initially to resolve any discovery disputes. The Commission itself shall also have the authority to make schedule modifications.

[FR Doc. 93–4587 Filed 2–25–93; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 32245]

Willamette & Pacific Railroad, Inc., Lease and Operation Exemption

Willamette & Pacific Railroad, Inc. (W&P), a noncarrier, has filed a notice of exemption: (1) To lease and operate approximately 183.82 miles of rail lines owned by the Southern Pacific Transportation Company (SPT) in the State of Oregon; and (2) to acquire incidental overhead trackage rights over a 41.2-mile SPT line in the State of Oregon. W&P will become a class III rail carrier. Parties expected to consummate the transaction on or after February 15, 1993.

The lines involved in the lease transaction consist of: (1) The Toledo Branch between from milepost 691.61 near Albany and milepost 766.70 at the end of the track, near Toledo; (2) that portion of the Newberg Branch between milepost 738.00 near St. Joseph and milepost 749.67 near Newberg; (3) that portion of the West Side Branch between milepost 738.00 near St. Joseph and milepost 671.58 at the end of the track, near Monroe; (4) the Dallas Branch between milepost 729.01 near Gerlinger and milepost 733.80 at the end of the track, near Dallas; (5) the Willamina Branch between milepost 730.46 near Whiteson and milepost 749.46 at the end of the track, near Willamina; and (6) the Bailey Branch between milepost 673.21 near Alpine Junction and milepost 680.06 near Dawson.

The incidental overhead trackage rights that W&P will acquire as part of the transaction will be over SPT's line between milepost 690.9 near Albany and milepost 649.7 near Eugene Yard, a distance of 41.2 miles. The trackage rights will enable W&P to interchange traffic with SPT at Eugene Yard.

This proceeding is related to Finance Docket No. 32246, *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Willamette & Pacific Railroad, Inc.*, wherein Genesee & Wyoming Industries, Inc., parent company of W&P, has concurrently filed a notice of exemption for its continuance in control of W&P when W&P becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: William P. Quinn, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) will be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4525 Filed 2–25–93; 8:45 am]
BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure; Hearing

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open hearing.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure has proposed amendments to Bankruptcy Rules 8002 and 8006. The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1993.

A hearing on the proposed amendments will be held by the Advisory Committee on Rules of Bankruptcy Procedure on April 2, 1993, in Washington, DC, at the Federal Judiciary Building, One Columbus Circle, NE., in the Education Center, room C–415. The hearing will start at 10 a.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing. For additional information contact John K. Rabiej, Chief, Rules Committee Support Office, at (202) 273–1820.

Dated: February 4, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–4512 Filed 2–25–93; 8:45 am]
BILLING CODE 2210–01–M

Judicial Conference Advisory Committee on Rules of Criminal Procedure; Hearings and Meeting

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of Open Hearings and Meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure has proposed amendments to Criminal Rules 16, 29, 32, and 40. The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1993.

In order that persons and organizations wishing to do so may comment orally on the proposed amendments, hearings will be held by the Advisory Committee on Rules of Criminal Procedure on March 29, 1993, in San Francisco, California, at the United States Courthouse, 450 Golden Gate Avenue, 17th Floor, Courtroom One; and on May 6, 1993, in Washington, DC, at the United States Courthouse, 3rd and Constitution, NW., Ceremonial Courtroom, Courtroom 20. Each hearing will start at 9 a.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe. Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 21 days before the hearing.

Also, a two-day meeting of the Advisory Committee on Rules of Criminal Procedure will be held on April 22–23, 1993, in Washington, DC, at the Federal Judiciary Building, One

Columbus Circle, NE., in the Fourth Floor Agency Conference Room. The meeting will be open to public observation but not participation and will begin each day at 9 a.m.

For additional information contact John Rabiej, Chief, Rules Committee Support Office, at (202) 273–1820.

Dated: February 9, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–4510 Filed 2–25–93; 8:45 am]

BILLING CODE 2210–01–M

Judicial Conference Advisory Committee on Rules of Evidence; Hearings and Meetings

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open hearings and meetings.

SUMMARY: The Judicial Conference Committee on Rules of Practice and Procedure submits an amendment to Evidence Rule 412 for public comment. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1993.

In order that persons and organizations wishing to do so may comment orally on the proposed amendment, hearings will be held by the Advisory Committee on Rules of Evidence on March 29, 1993, in San Francisco, California, at the United States Courthouse, 450 Golden Gate Avenue, 17th Floor, Courtroom One; and on May 6, 1993, in Washington, DC, at the United States Courthouse, 3rd and Constitution, NW., Ceremonial Courtroom, Courtroom 20. Each hearing will start at 9 a.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 21 days before the hearing.

Also, a one-day meeting of the Advisory Committee on Rules of Evidence will be held on March 30, 1993, in San Francisco, California, at the San Francisco Marriott, 55 Fourth Street; and a one-day meeting will be held on May 7, 1993, in Washington, DC, at the Federal Judiciary Building, One Columbus Circle, NE., in the Fourth Floor Agency Conference Room. The meetings will be open to public observation but not participation and will begin each day at 9 a.m.

For additional information contact John Rabiej, Chief, Rules Committee Support Office, at (202) 273–1820.

Dated: February 9, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–4511 Filed 2–25–93; 8:45 am]

BILLING CODE 2210–01–M

Judicial Conference Committee on Rules of Practice and Procedure; Meeting

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: June 17–19, 1993.

ADDRESSES: Administrative Office of the U.S. Court, Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: February 4, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–4514 Filed 2–25–93; 8:45 am]

BILLING CODE 2210–01–M

Judicial Conference Advisory Committee on Rules of Civil Procedure; Meeting

AGENCY: Judicial Conference of the United States Advisory Committee Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: May 3–4, 1993.

ADDRESSES: Administrative Office of the U.S. Courts, Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: February 4, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–4513 Filed 2–25–93; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Detention Center in Oahu Island, Hawaii

AGENCY: U.S. Department of Justice; Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The United States Department of Justice, Federal Bureau of Prisons has determined that a new Federal Detention Center (FDC) is needed to provide Federal detention capacity in Oahu Island, Hawaii.

The sites under consideration include the following:

(A) Manana Housing Area Site
(B) Halawa Industrial Park Property
(C) Airport Industrial Park Property
(D) Kalihi District Site
(E) Campbell Industrial Park Property

The Federal Bureau of Prisons proposes to construct a 500 unit detention facility for individuals who are awaiting trial, sentencing, or having other business before the United States District Court. As such, the facility is considered an extension of the Federal judiciary and law enforcement activity.

The sites under consideration are of sufficient size to provide space for detainee housing, programs, services and support areas, as well as administration, staff training and parking.

2. The Process: In the process of evaluating the five sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS, there will be numerous opportunities for public involvement. A public Scoping Meeting

will be held at a time and location convenient to the citizens of Oahu. The meeting will be well-publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings will be conducted by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Kevin McMahon, Senior Site Selection Specialist, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, Northwest, Washington, DC 20534, (202) 514–8697.

Dated: February 18, 1993.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch, Department of Justice.

[FR Doc. 93–4465 Filed 2–25–93; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decision

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Alabama:

AL91–1 (Feb. 22, 1991) p. All. (AL93–1).
AL91–2 (Feb. 22, 1991) p. All. (AL93–2).
AL91–3 (Feb. 22, 1991) p. All. (AL93–3).
AL91–4 (Feb. 22, 1991) p. All. (AL93–4).
AL91–5 (Feb. 22, 1991) p. All. (AL93–5).
AL91–6 (Feb. 22, 1991) p. All. (AL93–6).
AL91–7 (Feb. 22, 1991) p. All. (AL93–7).
AL91–8 (Feb. 22, 1991) p. All. (AL93–8).
AL91–9 (Feb. 22, 1991) p. All. (AL93–9).
AL91–10 (Feb. 22, 1991) p. All. (AL93–10).
AL91–11 (Feb. 22, 1991) p. All. (AL93–11).
AL91–12 (Feb. 22, 1991) p. All. (AL93–12).
AL91–13 (Feb. 22, 1991) p. All. (AL93–13).
AL91–14 (Feb. 22, 1991) p. All. (AL93–14).
AL91–15 (Feb. 22, 1991) p. All. (AL93–15).
AL91–16 (Feb. 22, 1991) p. All. (AL93–16).
AL91–18 (Feb. 22, 1991) p. All. (AL93–18).
AL91–19 (Feb. 22, 1991) p. All. (AL93–19).
AL91–20 (Feb. 22, 1991) p. All. (AL93–20).
AL91–21 (Feb. 22, 1991) p. All. (AL93–21).
AL91–22 (Feb. 22, 1991) p. All. (AL93–22).
AL91–23 (Feb. 22, 1991) p. All. (AL93–23).
AL91–24 (Feb. 22, 1991) p. All. (AL93–24).
AL91–25 (Feb. 22, 1991) p. All. (AL93–25).
AL91–26 (Feb. 22, 1991) p. All. (AL93–26).
AL91–27 (Feb. 22, 1991) p. All. (AL93–27).
AL91–28 (Feb. 22, 1991) p. All. (AL93–28).
AL91–29 (Feb. 22, 1991) p. All. (AL93–29).
AL91–30 (Feb. 22, 1991) p. All. (AL93–30).
AL91–31 (Feb. 22, 1991) p. All. (AL93–31).
AL91–32 (Feb. 22, 1991) p. All. (AL93–32).
AL91–33 (Feb. 22, 1991) p. All. (AL93–33).

Connecticut:

CT91–1 (Feb. 22, 1991) p. All. (CT93–1).
CT91–2 (Feb. 22, 1991) p. All (CT93–2).

CT91–3 (Feb. 22, 1991) p. All. (CT93–3).
CT91–4 (Feb. 22, 1991) p. All. (CT93–4).
CT91–5 (Feb. 22, 1991) p. All. (CT93–5).
CT91–6 (Feb. 22, 1991) p. All. (CT93–6).

District of Col:
DC91–1 (Feb. 22, 1991) p. All. (DC93–1).
DC91–2 (Feb. 22, 1991) p. All. (DC93–2).

Delaware:
DE91–1 (Feb. 22, 1991) p. All. (DE93–1).
DE91–2 (Feb. 22, 1991) p. All. (DE93–2).
DE91–3 (Feb. 22, 1991) p. All. (DE93–3).
DE91–4 (Feb. 22, 1991) p. All. (DE93–4).
DE91–5 (Feb. 22, 1991) p. All. (DE93–5).
DE91–6 (Feb. 22, 1991) p. All. (DE93–6).

Florida:
FL91–1 (Feb. 22, 1991) (FL93–1). p. All.
FL91–3 (Feb. 22, 1991) (FL93–3). p. All.
FL91–4 (Feb. 22, 1991) (FL93–4). p. All.
FL91–5 (Feb. 22, 1991) (FL93–5). p. All.
FL91–6 (Feb. 22, 1991) (FL93–6). p. All.
FL91–7 (Feb. 22, 1991) (FL93–7). p. All.
FL91–8 (Feb. 22, 1991) (FL93–8). p. All.
FL91–9 (Feb. 22, 1991) (FL93–9). p. All.
FL91–10 (Feb. 22, 1991) p. All. (FL93–10).
FL91–11 (Feb. 22, 1991) p. All. (FL93–11).
FL91–12 (Feb. 22, 1991) p. All. (FL93–12).
FL91–13 (Feb. 22, 1991) p. All. (FL93–13).
FL91–14 (Feb. 22, 1991) p. All. (FL93–14).
FL91–15 (Feb. 22, 1991) p. All. (FL93–15).
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Kentucky:
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Massachusetts:

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Maryland:

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Maine:

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Mississippi:

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North Carolina:

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New Hampshire:

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New Jersey:

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New York:

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Pennsylvania:

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Virginia:

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Michigan:
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Minnesota:
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The numbers of the decisions listed in the Government Printing Office Document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 12th Day of February 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–3818 Filed 2–25–93; 8:45 am]

BILLING CODE 4510–27–M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from mother sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

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AR93–13 (Feb. 26, 1993) .....
AR93–14 (Feb. 26, 1993) .....
AR93–15 (Feb. 26, 1993) .....
AR93–16 (Feb. 26, 1993) .....
AR93–17 (Feb. 26, 1993) .....
AR93–18 (Feb. 26, 1993) .....
AR93–19 (Feb. 26, 1993) .....
AR93–20 (Feb. 26, 1993) .....
AR93–21 (Feb. 26, 1993) .....
AR93–22 (Feb. 26, 1993) .....
AR93–23 (Feb. 26, 1993) .....
AR93–24 (Feb. 26, 1993) .....
AR93–25 (Feb. 26, 1993) .....
AR93–26 (Feb. 26, 1993) .....
AR93–27 (Feb. 26, 1993) .....
AR93–28 (Feb. 26, 1993) .....
Kansas:
KS93–18 (Feb. 26, 1993) .....
KS93–19 (Feb. 26, 1993) .....
KS93–20 (Feb. 26, 1993) .....

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts: MA93–5 (FEB. 19, 1993).
New Hampshire: NH93–4 (FEB. 19, 1993).
New York:
NY93–8 (Feb. 19, 1993) .....
NY93–13 (Feb. 19, 1993) .....
NY93–16 (Feb. 19, 1993) .....
NY93–23 (Feb. 19, 1993) .....
Pennsylvania:
PA93–17 (Feb. 19, 1993) .....

Volume II

Indiana IN93–3 (Feb. 19, 1993)
Michigan:
MI93–1 (Feb. 19, 1993) .....
MI93–2 (Feb. 19, 1993) .....
MI93–3 (Feb. 19, 1993) .....
MI93–5 (Feb. 19, 1993) .....
MI93–7 (Feb. 19, 1993) .....
MI93–12 (Feb. 19, 1993) .....

Volume III

Washington:
WA93–2 (Feb. 19, 1993) .....
WA93–7 (Feb. 19, 1993) .....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of February, 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–4257 Filed 2–25–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

CLOSED SESSION: March 11, 1993, 8:30 a.m. until 10:30 a.m.

DATES March 11, 1993, 10:45 a.m.–5 p.m., March 12, 1993, 8:30 a.m.–3 p.m.

ADDRESSES: Hyatt Regency, 400 New Jersey Avenue, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carmelita R. Pratt, Administrative Officer, The National Commission on Manufactured Housing, (GSA) 7th & D Street, SW., 7109, Washington, DC 20407 (202) 708–5702.

Type of Meeting: Open.

Due to administrative error this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

In addition to this meeting, the following is a list of full commission meetings scheduled for 1993.

Dates and days
March 11 & 12, 1993—Thursday & Friday
April 15 & 16, 1993—Thursday & Friday
May 6 & 7, 1993—Thursday & Friday
June 10 & 11, 1993—Thursday & Friday
July 15 & 16, 1993—Thursday & Friday
August 19 & 20, 1993—Thursday & Friday
September 22 & 23, 1993—Thursday & Friday
October 21 & 22, 1993—Thursday & Friday
November 18 & 19, 1993—Thursday & Friday
December No Meeting

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–4520 Filed 2–25–93; 8:45 am]

BILLING CODE 6820–EA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008989]

Envirocare of Utah, Inc.; Availability of the Envirocare Draft Environmental Impact Statement

1. Description of Proposed Action

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a Draft Environmental Impact Statement (DEIS) regarding the Envirocare of Utah, Inc. license action. The DEIS documents the environmental consequences of granting Envirocare of Utah, Inc. a license to receive, store, and dispose of uranium and thorium byproduct material (as defined in section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Tooele County, Utah.

The applicant proposes to dispose of high-volume, low-activity 11e.(2) byproduct material received in bulk by rail and truck. The material will be placed in earthen disposal cells in lifts and covered with earth and rock. The applicant proposes to conduct operations on a site where the applicant

currently disposes of Naturally Occurring Radioactive Material (NORM) and Low-Level radioactive waste under licenses from the Utah Department of Health, Bureau of Radiation Control. The State of Utah, however, does not have the authority to regulate the disposal of section 11e.(2) byproduct material, which remains with the Nuclear Regulatory Commission (NRC).

2. Document Availability

A Federal Register Notice by the U.S. Environmental Protection Agency will also be issued advising of the availability of this DEIS. A free single copy of draft NUREG–1476 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, room P–368B, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L St. NW., Washington, DC.

Any interested party may submit comments on this document for consideration by the staff. To be certain of consideration, comments on this report must be received by the date published in the Federal Register Notice. Comments received after the due date will be considered to the extent practical. Comments on the DEIS should be sent to Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Sandra L. Wastler, Uranium Recovery Branch, Division of Low-Level Radioactive Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2582.

Dated at Rockville, Maryland, this 22 day of February, 1993.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Materials Safety and Safeguards, NRC.

[FR Doc. 93–4480 Filed 2–25–93; 8:45 am]

BILLING CODE 7590-01-M

South Carolina Electric & Gas Co., Virgil C. Summer Nuclear Station; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

[Docket No. 50–395]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12 issued to South Carolina Electric & Gas Company (the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1 (V.C. Summer), located in Fairfield County, South Carolina.

The proposed amendment would allow the use of interim plugging criteria (IPC) at V.C. Summer; specifically it would modify Technical Specifications 3/4.4.5, Steam Generators, 3/4.4.6, Reactor Coolant System Leakage, and the associated bases which provide tube inspection requirements and acceptance criteria to determine the level of degradation for which a tube experiencing outside diameter stress corrosion cracking (ODSCC) at the tube support plate elevations may remain in service in the V.C. Summer steam generators. For Cycle 8 operation of V.C. Summer, an interim tube support plate elevation plugging criteria that uses a voltage based plugging limit is proposed; specifically, flaw indications with a bobbin coil voltage less than or equal to 1.0 volt can remain in service without further action. For flaw indications in excess of 1.0 volt but less than 2.2 volts, the tube can remain in service provided a rotating pancake coil (RPC) inspection of the indication does not detect a defect. Indications involving modes of tube degradation other than ODSCC will be assessed for operability based on the current plugging criteria.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of V.C. Summer in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no tube support plate restraint) at room temperature conditions show burst pressures in excess of 5475 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 11 volts (WCAP–13522). Burst testing performed on pulled tubes from similar plants with ¾ inch tubing shows a measured burst pressure of approximately 5400 psi at room temperature for an indication at 3.5 volts. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the RG [Regulatory Guide] 1.121 criterion requiring the maintenance of a margin of 3 times normal operating pressure differential (3 [delta] P) on tube burst. The 3 [delta] P for the V.C. Summer steam generators corresponds to 3996 psi. Bobbin voltages of tubes which burst near the 3 [delta] P limit on pressure differential ranged from 8.55 to 15.7 volts. Based on the existing data base, this criterion is satisfied with ¾" diameter tubing with bobbin coil indications with signal amplitudes less than 3.7 volts, regardless of the indicated depth measurement. This structural limit is based on a least squares fit of the burst data at a lower 95% prediction interval, further reduced for operating temperature. Burst tube crack morphologies include tubes with single or only a few large axial cracks (more representative of Model Boilers), multiple axial crack networks which form larger macrocracks, and macrocrack networks which are formed predominantly of axial macrocracks with smaller, shallower circumferential cracks joining the axial macrocracks. This last morphology has been termed cellular corrosion. The burst data reduction conservatively bounds all data points from destructive examinations performed to date. No crack morphology detected has resulted in burst pressures for a particular voltage which is not representative of the entire data spread and not bounded by the voltage/burst correlation Therefore, it is judged that the current voltage/burst correlation is representative of any observed or expected (by metalography) tube degradation morphology affecting the TSP [tube support plate] crevice area.

When considering the calculated growth rates for ODSCC within the V.C. Summer steam generators, a 1.0 volt plugging is shown to adequately protect the structural limit. Considering an average voltage increase from the previous cycles eddy current results of 0.29 volts, and adding a 15% NDE [non-destructive evaluation] uncertainty of 0.15 volts (15% of 1 volt) to

the interim plugging criteria of 1.0 volts results in an EOC [end of cycle] voltage of 1.44 volts. This end of cycle voltage compares favorably with the structural limit of 3.7 volts. When 90% cumulative probability values for growth (0.70 volts) and 14% NDE uncertainty values (0.14 volt) are applied to the 1.0 volt plugging limit, the projected EOC voltage of 1.84 volts is obtained. From the voltage/burst correlation in WCAP–13522, the predicted burst pressure of a 1.84 volt indication is 4740 psi, 19% greater than the 3 [delta] P limit established by RG 1.121 of 3996 psi. The growth rate used to determine the projected EOC voltage is based on the review of growth rates for 87 TSP intersections. This includes all reported indications for which detectable eddy current signals were observed from both the 1990 and 1991 inspections.

Additionally, representing the bounding case, the maximum voltage increase from the previous cycle of 2.0 volts is applied to the 1.0 volt plugging limit, resulting in an EOC voltage of 3.0 volts, which is still below the EOC structural limit. Adding NDE uncertainty at 99% cumulative probability to the maximum growth results in a bounding EOC voltage of 3.25 volts, which is 0.45 volts below the RG 1.121 structural limit of 3.7 volts. It must further be noted that the RG 1.121 structural limit applies a factor of safety of 3 to the normal operating pressure differential. A more realistic comparison would be to compare this bounding EOC voltage of 3.25 volts to the voltage which would indicate a burst potential at SLB [steam line break]. Using the lower 99% prediction interval burst correlation results in a burst pressure voltage for SLB conditions of approximately 9.3 volts.

The BOC [beginning of cycle] voltage limit of 2.2 volts is used to protect against EOC voltages exceeding the 3.7 volt, RG 1.121 structural limit. The 2.2 volt value represents an upper bound to assess the acceptability of bobbin coil indications, regardless of RPC [rotating pancake coil] verification. It is conservatively assumed that BOC voltage levels of this magnitude and greater could result in an indication reaching the structural limit at EOC conditions. The 2.2 volt limit is derived by starting with the 3.7 volt structural limit and reducing it by the NDE uncertainty at 90% cumulative probability (20% uncertainty, .45 volts) and the average voltage growth (45% growth, 1.0 volt). This methodology is considered conservative since the 90% cumulative uncertainty value is found to be 14%, but conservatively assumed to be 20% for the analysis. Average growth values for all indications was 44%, while average growth from BOC indications above 0.75 volt was found to be 16%. The 1.0 volt growth allowance (45%) corresponds to 96% cumulative voltage growth. Use of a 1.0 volt interim plugging limit implies an inherent 1.2 volt margin to a plugging limit developed using RG 1.121 methodology.

Only three indications of ODSCC have been reported to have operating leakage—all three have been in European plants. No field leakage has been reported at other plants from tubes with indications with a voltage level of under 7.7 volts (from ¾" tubing). Relative to the expected leakage during accident condition loadings, the accident analyses affected by primary-to-secondary leakage and steam release to the environment as described in the V.C. Summer FSAR [Final Safety Analysis Report] will not be affected upon implementation of the IPC [interim plugging criteria].

A deterministic bobbin voltage-leakage potential correlation is applied to the Monte Carlo voltage predictions to calculate the potential SLB leakage at the EOC–8 at V.C. Summer. The leak rate data for the model boiler and pulled tube specimens were analyzed in order to establish an algebraic relationship that could be used to predict the probability of leakage as a function of bobbin voltage amplitude. A correlation between bobbin voltage and SLB leak rate has been established. The slope of the SLB leak rate correlation is affected by the selection of the regressor variable (voltage vs. leak rate or leak rate vs. voltage). The final correlation combines the portions of the two regression curves to obtain a conservative relationship over the entire voltage range. Based on the protected EOC voltage distribution established by the Monte Carlo analysis, a particular probability of leakage for each voltage bin (i.e., each voltage increment, usually kept to 0.1 volts for simplicity) is established. The values for SLB leak rate for each voltage bin are applied to the leakage probability for each bin. The total SLB leak rate is then determined by integrating the result of the entire EOC voltage distribution. Applying this methodology to the V.C. Summer projected EOC voltage distribution from the previous cycle results in a maximum leak rate of 0.02 gpm for loop B, the most limiting steam generator. The 0.02 gpm SLB leak rate compares favorably with the accident analyses assumptions of 1.0 gpm identified in Table 15.4–23 of the V.C. Summer FSAR. When the probability of leakage and leak rate at 95% confidence limits are applied to a 2.0 volt indication, it is determined that overall effect of each 2.15 volt EOC indication would be to contribute approximately 0.0009 gpm per 2.15 volt indication during an SLB with a [delta] P of 2335 psia. The Monte Carlo analyses indicate a maximum EOC 7 projection of 2.97 volts (99.5% cumulative probability). This value is typical of the maximum voltages observed following application of the existing depth based criteria.

Upon application of the interim plugging criteria, only a negligible increase in leakage (if any increase at all is determined) above normal operating leakage would be expected during plant transients.

Therefore, as implementation of the proposed 1.0 volt interim plugging criteria during Cycle 8 does not adversely affect steam generator tube integrity and results in acceptable dose consequences, the proposed amendment does not result in any [significant] increase in the probability or consequences of an accident previously evaluated within the V.C. Summer FSAR.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed interim tube support plate elevation steam generator tube plugging criteria does not introduce any significant changes to the plant design basis. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions). And use of the criteria does not provide a mechanism which could result in an accident that has not previously been evaluated.

Upon application of the interim plugging criteria, no excessive primary-to-secondary leakage is anticipated during all plant conditions due to degradation at the tube support plate elevations in the V.C. Summer steam generators. However, the RG 1.121 criterion of providing protection against the leakage from the maximum permissible single crack length which may be achieved during Cycle 8 operation must be met. The primary-to-secondary leakage limits proposed to be implemented with the interim plugging criteria is conservative with respect to the RG 1.121 criterion.

Concurrent with the implementation of the interim plugging criteria, SCE&G will implement a maximum operational leakage limit of 450 gpd for all steam generators, and a maximum of 150 gpd for any one steam generator. The leakage limits will help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the crack length that provides a factor of safety of 3 against bursting at normal operating pressure differential. A voltage amplitude of 3.7 volts for typical ODSCC corresponds to this tube burst requirement at a lower 95% prediction interval on the burst correlation. Alternate crack morphologies can correspond to 3.7 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 3 times normal operating pressure differential and SLB conditions are 0.44 inch and 0.76 inch, respectively. Nominal leakage for these crack lengths would range from about 0.2 gpm to 2.3 gpm, respectively, while lower 95% confidence level leak rates would range from about 0.04 gpm to 0.33 gpm, respectively. A leak rate of 150 gpd will provide for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Application of the 1.0 volt interim steam generator tube plugging criteria at V.C. Summer will help preclude tube burst during all plant conditions during Cycle 8 operation. Tube burst margins are expected to meet or exceed RG 1.121 acceptance criteria. The

limiting consequence of the application of the interim plugging criteria is a potential for primary to secondary leakage below the currently allowable value of 1.0 gpm. Based on the previous cycle eddy current results projected to EOC conditions, a maximum SLB leakage of 0.02 gpm is predicted. This amount of leakage would result in off-site radiological consequences well within a small fraction of 100 CFR part 100 limits. Unacceptable leakage is not anticipated at normal operating or reactor coolant pump locked rotor conditions. Therefore, as the existing tube integrity criteria and 7 accident analyses assumptions and results continue to be met, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. During the Refueling Cycle 7 outage (projected for March 1993) the eddy current results will be evaluated and a specific leak rate calculation for EOC–8 will be generated. Based on the prior eddy current inspection results, the leak rate is expected to be much less than 1.0 gpm.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage based bobbin probe interim plugging criteria at V.C. Summer has been demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The end of cycle distribution of crack indications at the tube support plate elevations is calculated to result in minimal primary to secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

It has been determined that the combined effects of LOCA + SSE [loss of coolant accident plus safe shutdown earthquake] on the steam generator component (as required by GDC 2), may result in localized tube deformation in the area of the wedge regions, at the upper support plates.

Analyses results show that for the V.C. Summer steam generators several tubes near wedge locations could be affected in this manner. These tubes have been precluded from application of interim plugging criteria * * * For all other steam generator tubes, the possibility of secondary to primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the expected amount of secondary to primary leakage in the event of a LOCA + SSE is expected to be much less than the maximum primary to secondary leakage associated with the application of this criteria, i.e., 150 gpd per steam generator. Secondary to primary in-leakage would be less than primary to secondary leakage for the same pressure differential since the cracks would tend to close under a secondary to primary pressure differential. Additionally, since no TSP deflection would be postulated during a LOCA, the presence of the tube support plate is expected to reduce the amount of in-leakage. Any estimation of in-leakage is further reduced based on the expectation that EOC bobbin voltages are predicted (by Monte Carlo) to be a maximum of 2.97 volts, compared to the threshold limit for normal operation leakage of 7.7 volts.

With regard to limits on tube structural integrity as defined by RG 1.121, the proposed V.C. Summer single cycle, 1.0 volt plugging limit provides for additional margin against tube burst at EOC conditions compared to the currently used 40% depth based criteria. Previous studies have indicated that the through-wall growth rate for ODSCC at the TSP's to be about 10 to 15% per cycle. When these values are combined with eddy current uncertainty (assumed to be 15% for depth based calls), an indication just below the plugging limit of 40% can result in EOC reported depths of up to about 70% through-wall. Depth based criteria modeling would permit crack lengths up to the TSP thickness for which 70% depth provides 3 [delta] P capability. This is approximately equal to the structural limit determined by the criteria of RG 1.121. Using the 1.0 volt criteria, a maximum EOC voltage of 2.97 volts is predicted using Monte Carlo. This methodology predicts EOC voltages at a cumulative probability of approximately 99.5% for 200 indications in the population. The EOC voltage which corresponds with a burst pressure equal to three times the normal operating pressure differential is approximately 3.7 volts, therefore, a 20% margin (0.73 volts) between maximum projected EOC voltages and the structural limit voltage is afforded using the voltage based criteria, where little or no margin could be expected for a similar condition tube using the current 40% depth based criteria. Also, comparing the maximum projected EOC voltage with the maximum bobbin voltage obtained during the last inspection indicates that EOC voltages are approximately equal for both criteria. The maximum voltage from the last inspection was 2.81 volts, with a growth of 2.01 volts. The maximum EOC voltage predicted by Monte Carlo of 2.97 volts assumed an initial BOC voltage of 1.0, indicating total growth and uncertainty of 1.97 volts.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by: use of a probe wear standard, enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left inservice. Whether a depth based or voltage based criteria is used, the peak-to-peak voltage is independent of the phase angle calibration for depth and will inherently provide for a more accurate methodology for assessing degraded tube operability. Pulled tube experience, for some crack morphologies has shown that as crack depth and length increase, bobbin voltage increases also.

As noted previously, implementation of the tube support plate elevation-plugging criteria will decrease the number of tubes which must be repaired by sleeving or taken out of service by plugging. The installation of steam generator tube plugs reduces the RCS [reactor coolant system] flow margin. Thus, implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any BASES of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules Review & Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 29, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facilities operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be

filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists which the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Jocelyn A. Mitchell: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 12, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 22nd day of February 1993.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4481 Filed 2–25–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Kazakhstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the effective date, with respect of the Republic of Kazakhstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Kazakhstan. An exchange of diplomatic notes with the Republic of Kazakhstan in accordance with Article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Kazakhstan," took place in Alma Ata, Kazakhstan on February 18, 1993. Accordingly, the Agreement became effective on February 18, 1993, with respect to the Republic of Kazakhstan, and nondiscriminatory treatment is extended to products of the Republic of Kazakhstan as of February 18, 1993 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–4547 Filed 2–25–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31890; File No. SR–BSE–92–04]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1, No. 2, and No. 3 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 4, No. 5, No. 6, and No. 7 to Proposed Rule Change Relating to its Specialist Performance Evaluation Program

February 19, 1993.

I. Introduction

On April 23, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Specialist Performance Evaluation Program ("SPEP" or "Evaluation Program") to incorporate objective measures of performance. The Exchange has requested that the Commission approve this filing on a 12-month pilot basis effective beginning with the January to April 1993 review period, at which point the BSE's current performance evaluation pilot would cease to exist as a separate program.[3]

On May 26, 1992, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[4] On July 27, 1992, the BSE submitted Amendment No. 2 to the proposed rule change.[5] On September 28, 1992, the BSE submitted Amendment No. 3 to the proposed rule change.[6] These amendments make certain technical and clarifying corrections to the Evaluation Program. The BSE submitted two further amendments on December 16, 1992. Amendment No. 4 would clarify the conditions under which a specialist's performance would be reviewed.[7] Amendment No. 5 would raise the threshold levels for the objective measures of performance.[8] Two final amendments, Amendments No. 6 and No. 7, were submitted by the BSE on January 15, 1993[9] and January 28, 1993.[10] These amendments would further specify the conditions under which a specialist's overall performance would subject him to review.

The proposed rule change, together with Amendments No. 1, No. 2 and No. 3, was published for comment in Securities Exchange Act Release No. 31268 (September 30, 1992), 57 FR 46208 (October 7, 1992). No comments were received on the proposal. This order approves the proposed rule change, including all seven amendments.

II. Background

The BSE's Specialist Performance Evaluation Program presently consists of a questionnaire,[11] which asks floor brokers to rate various aspects of the specialist's performance. The questionnaire consists of twelve questions, eight of which are weighted and used in computing an average score. Both for each question and overall, the specialist is graded on a nine-point scale (with one being the worst and nine the best).

For purposes of the Evaluation Program, the Exchange has set certain minimum acceptable levels of performance. Failure to meet these thresholds subjects the specialist to performance improvement actions. Specifically, if a specialist scores below 4.5 overall, for any one review period, or on one question, for two out of three

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8928 (March 14, 1986) (File No. SR–BSE–84–04) ("1984 Approval Order"). The Commission extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06), 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–92–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). Commission approval of BSE's current SPEP pilot program expires on February 26, 1993.

[4] See letter from Karen Aluise, Attorney, BSE, to Mary Revell, Branch Chief, SEC, dated May 18, 1992 ("Amendment No. 1").

[5] See letter from Karen Aluise, Attorney, BSE, to Sharon Lawson, Assistant Director, SEC, dated July 27, 1992 ("Amendment No. 2").

[6] See letter from Karen Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, SEC, dated September 28, 1992 ("Amendment No. 3").

[7] See letter from Karen Aluise, Attorney, BSE, to Beth Stekler, Staff Attorney, SEC, dated December 11, 1992 ("Amendment No. 4").

[8] See letter from Karen Aluise, Attorney, BSE, to Beth Stekler, Staff Attorney, SEC, dated December 11, 1992 ("Amendment No. 5").

[9] See letter from Karen Aluise, Attorney, BSE, to Beth Stekler, Staff Attorney, SEC, dated January 13, 1993 ("Amendment No. 6").

[10] See letter from Karen Aluise, Attorney, BSE, to Beth Stekler, Staff Attorney, SEC, dated January 22, 1993 ("Amendment No. 7").

[11] When the Commission first approved BSE's SPEP pilot program it included a quotation evaluation score. See 1984 Approval Order, *supra* note 3. The Commission later approved a BSE proposal to eliminate this quotation evaluation score from the SPEP, on the condition that the BSE develop new objective criteria for evaluating specialists. See Securities Exchange Act Release No. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06).

consecutive review periods, he is requested to meet with the Performance Improvement Action Committee. This is a voluntary meeting to discuss, informally, possible methods of improving the specialist's performance.

If, during either one of the next two review periods, the specialist repeats his poor performance (e.g., fails to score above 4.5 overall or on the same one question, whichever condition was the basis for his informal review), he is then referred to the Market Performance Committee. This meeting is mandatory. Among the actions the Market Performance Committee can take are reallocating the specialist's stock or suspending his trading account.[12]

As described in more detail below, the BSE has proposed significant revisions to its existing Evaluation Program. The current pilot program would be deleted concurrent with the adoption of these proposals.

III. Description of the Proposal

The Exchange proposes to amend its Specialist Performance Evaluation Program to revise its questionnaire[13] and to incorporate objective measures of performance.[14] The BSE proposal would use the BEACON system[15] to assess how well a specialist handles market and marketable limit orders routed to him for execution. For each specialist, a record of all action taken on relevant BEACON orders would be accumulated in a special file, from which the four calculations described below would be run.

First, Turnaround Time would measure the average number of seconds from the receipt of a guaranteed market or marketable limit order (i.e., for 1299 shares or less) in BEACON until it is executed (in whole or in part), stopped or cancelled.[16] Time would continue to accumulate if the specialist just moves an order from the auto-ex screen to the manual one, until that order is executed (in whole or in part), stopped or cancelled.

Second, Holding Orders Without Action would measure the number of market and marketable limit orders which are neither executed, stopped nor cancelled within twenty-five seconds. This measure differs from Turnaround Time in that orders of all sizes (including those already counted towards Turnaround Time) would be analyzed.[17]

Third, Trading Between the Quote would measure the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛.

Fourth, Executions in Size Greater than Best Bid and Offer (BBO) would measure the number of market and marketable limit orders which exceed, and are executed in a size larger than, BBO size.

For each of the above measures, including the revised questionnaire, the specialist would receive a raw score. A ten point grading scale would then be applied to ranges of raw scores. In computing the overall program score, the measures would be assigned the following weights: Turnaround Time, 15%; Holding Orders Without Action, 15%; Trading Between the Quote, 25%; Executions in Size Greater than BBO, 25%; Questionnaire, 20%.

The Exchange also proposes to amend the conditions for performance review. For each measure, the Evaluation Program would state at what score specialist performance would be deemed adequate.[18] A specialist who is deficient in the same one objective measure, for two out of three consecutive review periods, would be required to appear before the Performance Improvement Action Committee.[19] The purpose of this meeting is to discuss, informally, possible methods of improving the specialist's performance.

If the specialist does not improve in the next review period, he would be referred to the Market Performance Committee. The Market Performance Committee would be directed to take such actions as it deems necessary and appropriate to address the deficient score. These actions would include suspending a specialists's trading account, suspending his alternate specialist account privilege,[20] or reallocating his specialty stocks.[21]

The Exchange also proposes to add modified relative rankings to the Evaluation Program. A specialist who is deficient on the overall program score, for two out of three consecutive review periods, would be required to appear before the Market Performance Committee, with the same possible consequences as above.[22] In addition, the Exchange staff would review the performance of any other specialists whose scores place them in the bottom ten percent of all BSE units.[23]

The BSE believes that the proposed rule change will promote just and equitable principles of trade and aid in the perfection of a free and open market and a national market system. The Exchange states that the SPEP results

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[12] A specialist's trading account permits him to trade stocks other than his specialty stock.

[13] The questionnaire was revised to clarify certain language, to adjust the weights of certain questions and to minimize overlap with the objective measures. See Amendment No. 1, *supra*, note 4.

[14] In addition to the substantive changes, Chapter XV of the BSE Rules is being reorganized; SPEP, now ¶ 2155.03, will be moved to new ¶ 2156.

[15] BEACON is the BSE's automated order-routing and execution system. Of all incoming BEACON orders, SPEP would collect data for regular buy and sell market and marketable limit orders only. Thus BEACON orders with qualifiers (e.g., buy minus or sell plus, market-on-close, stop, stop limit, all or none, etc.) and crosses would be excluded from analysis.

[16] Data collection would start when the stock opens on the primary market. Blocks of time would be excluded in the event of trading halts, BEACON system failure, etc.

[17] The same exclusions would apply for Holding Orders Without Action as for Turnaround Time. See, *supra*, note 16.

[18] A specialist is deficient in any individual objective measure or the overall program if he scores below certain minimum performance levels, as set forth in Amendment No. 5 to the proposed rule change.

Thus for his performance to be deemed adequate, a specialist must receive the following scores:

Overall Evaluation Score—at or above weighted score of 5.80

Turnaround Time—below 21.0 seconds (8 points)

Holding Orders Without Action—below 21% (7 points)

Trading Between the Quote—at or above 26% (5 points)

Executions Greater than BBO—at or above 76% (6 points)

Questionnaire—at or above weighted score of 50 (4 points)

See Amendment No. 5, *supra*, note 8.

[19] Amendment No. 4 specifies that, in the event a specialist receives a deficient score on the questionnaire alone, the Exchange staff would review the deficient questionnaire to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems. See Amendment No. 4, *supra*, note 7.

[20] Alternate specialists provide added liquidity to the market, by promising to trade up to a certain amount of shares, on the request of the primary specialist. A specialist must apply for the privilege of being an alternate.

[21] The possible performance improvement actions are described in the BSE Rules under SPEP's Supplemental Material. This Supplemental Material is intended to provide specialists with adequate notice of the consequences of poor performance. It does not articulate any new substantive standards.

[22] See Amendment No. 6, *supra*, note 9.

[23] Amendment No. 7 specifies that, in the event a specialist ranked in the bottom ten percent does not fall below the threshold for the overall performance evaluation program, the Exchange staff would review the performance of the specialist to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems. See Amendment No. 4, *supra*, note 7.

According to the BSE, a specialist need only fall within the above provision for one review period before his performance would be looked at by the Exchange staff. In appropriate circumstances, the Performance Improvement Action Committee (after being informed by the staff) would call in the specialist for informal discussion and/or refer him to the Market Performance Committee for formal proceedings. Telephone conversation between Karen Aluise, Attorney, BSE, and Beth Stekler, Staff Attorney, SEC, on January 21, 1993. Staff review of specialists who are deficient on the questionnaire alone, see *supra*, note 19, would proceed along the same lines.

weigh heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties.

IV. Discussion

The Commission believes that specialists play a crucial role in providing stability, liquidity and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[24] To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The BSE's Specialist Performance Evaluation Program is critical to this oversight.

The Commission notes that the proposed rule change includes both subjective and objective measures of performance. Together the questionnaire and the objective BEACON criteria should adequately measure specialist performance on the BSE. For example, specialists' handling of both manually executed and automated orders would be examined. Accordingly, the Commission believes that this Evaluation Program is a fair tool by which to judge specialist performance.[25]

The Commission continues to believe that questionnaires completed by floor brokers can provide an additional source of useful information for purposes of evaluating specialist performance.[26] Floor brokers have direct and frequent interaction with specialists, making them qualified to rate specialist performance. Moreover, even with the increased use of automated execution and trading systems, specialists must still handle many orders, including all those above a certain size, manually.

Nevertheless, the Commission has consistently encouraged the exchanges to develop objective measures of specialist performance. The Commission believes that a specialist evaluation program which measures performance through a combination of floor broker surveys and objective criteria should provide an effective and fair means of evaluating specialists.[27] In response, the BSE is proposing to add several objective criteria to measure specialist performance: Turnaround Time and Holding Orders Without Action (30% of the overall program) apply to timeliness of execution; Trading Between the Quote (25%) applies to price; and Executions in Size Greater than BBO (25%) applies to depth. The Commission believes this proposal represents a good first step for the BSE in developing a truly effective specialist evaluation program. These measures, together with the floor broker questionnaire, should generate sufficiently detailed information to enable the Exchange to make accurate assessments of specialist performance.

The Commission, therefore, believes that the proposed rule change should provide the BSE with the means to identify and correct poor performance by specialists.[28] Furthermore the possibility of the institution of a performance improvement action as a result of the evaluation process, in addition to the use of the scores in making stock allocation decisions, should help motivate and provide an incentive for specialists to maintain high levels in the market making performance. This, in turn, should benefit the execution of public orders and further the protection of investors. Nevertheless, the Commission believes that the BSE should continue to look for ways to improve its Evaluation Program. To this end, the Commission encourages the Exchange to examine its minimum performance thresholds in order to ensure that they are set at appropriate levels and also to consider incorporating additional objective measures into its program.[29]

Furthermore, as noted above, the BSE is proposing to adopt a modified relative performance review. The Commission has long favored the use of relative performance standards in the specialist evaluation process. In its study of the 1987 Market Break, the Division of Market Regulation ("Division") found a wide disparity in specialist performance. The Division concluded that, if there are specialists whose performance diverges widely from the best units, the exchanges should ensure that they are subject to review and, if necessary, to stock reallocation.[30]

The Commission believes that the BSE's modified relative performance standards should enhance its specialist evaluation program. With its review of units falling in the bottom ten percent of the rankings,[31] the Exchange has added a mechanism for identifying specialists who, despite having surpassed the threshold for the overall program score, are nevertheless performing comparatively poorly. The Commission previously has suggested that the bottom ten percent of the overall performance rankings should be a fair approximation of those specialists whose performance is largely inferior to the bulk of units.[32] The Commission would have preferred that all BSE specialists ranked in the bottom ten percent be subjected to mandatory performance improvement actions. Nevertheless, the Commission is satisfied that, taking the staff review provision together with the other conditions for review, all performance problems should be brought to the attention of the appropriate committees and that corrective actions will be taken where warranted.

The Commission believes that it is appropriate to approve this rule filing on a 12-month pilot basis, expiring December 31, 1993. This 12-month period will enable the Exchange to determine the appropriateness of the

[24] Rule 11b–1, 17 CFR 240.11b–1 (1991); Ch. XV, ¶ 2155.01 of the BSE Rules.

[25] The Commission recently approved, on a permanent basis, a similar proposal by the Philadelphia Stock Exchange. See Securities Exchange Act Release No. 29369 (June 26, 1991), 56 FR 30604 (July 3, 1991) (File No. SR–Phlx–87–42). Furthermore, the Commission has temporarily approved a New York Stock Exchange ("NYSE") program combining objective and subjective measures of specialist performance. See, e.g., Securities Exchange Act Release No. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992).

[26] The Commission has previously approved numerous specialist performance evaluation questionnaires. See, e.g., Securities Exchange Act Release Nos. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (File No. SR–NYSE–89–32); 27455 (November 22, 1989), 54 FR 49152 (November 29, 1989) (File No. SR–Amex–89–27); 27646 (March 26, 1990), 55 FR 12084 (March 30, 1990) (File No. SR–MSE–87–13); and 28843 (February 1, 1991), 56 FR 5040 (February 7, 1991) (File No. SR–PSE–87–19).

[27] See, e.g., Securities Exchange Act Release Nos. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992) (File No. SR–NYSE–92–11); 28843 (February 1, 1991), 56 FR 5040 (February 7, 1991) (File No. SR–PSE–87–19). See also SEC, Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report"), at xvii.

[28] The BSE has also improved its ability to correct poor specialist performance by making its review process more rigorous. For example, deficient specialists would be required, rather than merely requested, to attend an informal meeting with the Performance Improvement Action Committee. This should help the specialist address weaknesses before his performance deteriorates to a level where formal remedial actions are necessary.

[29] For example, the BSE could develop additional measures of market depth, such as how often the specialist's quote exceeds 100 and 500 shares, or how often the BSE quote, in size, is larger than the BBO market (excluding quotes for 100 shares).

[30] See Market Break Report at xvii and 4–26 to 4–27.

[31] See, supra, note 23.

[32] In 1990, The Commission approved an NYSE proposal to revise its specialist performance evaluation pilot program. See Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (File No. SR–NYSE–89–32). As under the BSE's proposal, NYSE Rule 103A ranks specialists and subjects those falling in the bottom ten percent to performance review. See Securities Exchange Act Release No. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992) (File No. SR–NYSE–92–11).

objective measures, their respective weights and the acceptable levels of performance; as well as to review the effectiveness of the overall Evaluation Program. The Commission therefore requests that the BSE submit a report to the Commission, by September 15, 1993, describing its experience with the pilot. At a minimum, this report should contain data, for the first two 4-month review periods of 1993, on (1) the number of specialists who fell below acceptable levels of performance for each objective measure, the questionnaire and the overall program, and the specific measures in which each such specialist was deficient; (2) the number of specialists who, as a result of the objective measures, appeared before the Performance Improvement Action Committee for informal counseling; (3) the number of such specialists then referred to the Market Performance Committee and the type of action taken against them; (4) the number of specialists who, as a result of the overall program, appeared before the Market Performance Committee and the type of action taken against them; (5) the number of specialists who, as a result of the questionnaire or falling in the bottom ten percent, were referred by the Exchange staff to the Performance Improvement Action Committee and the type of action taken against them (this should include the number of specialists then referred to the Market Performance Committee and the type of action taken by that Committee); and (6) a list of stocks reallocated due to substandard performance and the particular unit involved. Any requests to modify this pilot, to extend its effectiveness or to seek permanent approval for the Evaluation Program also should be submitted to the Commission by September 15, 1993, as a proposed rule change pursuant to section 19(b) of the Act.

The Commission finds good cause for approving Amendments No. 4, No. 5, No. 6 and No. 7 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 4 refines certain details of the Specialist Performance Evaluation Program in a manner which is both thorough and fair. This amendment would provide the Exchange with a more precise, but still informal, means of identifying potential performance problems before they occur. The conditions triggering formal review, however, would remain the same. As a result, no specialists could be subjected to such review without having received notice thereof. Similarly, Amendment No. 5 makes certain technical adjustments to the Evaluation Program but leaves its overall structure unchanged. While the thresholds for the objective measures of performance would be made somewhat more stringent, the Commission preliminarily does not believe that this should place a substantial burden on the BSE's specialists. In fact, the Commission believes that the proposed thresholds more adequately measure specialist performance. Amendments No. 6 and No. 7 refine certain details of the performance review procedures. Finally, the original proposal and Amendments No. 1, No. 2 and No. 3 were published for the full statutory period. No comments were received on any aspect of the proposal, which involves significant changes to the BSE's Specialist Performance Evaluation Program.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 4, No. 5, No. 6 and No. 7 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendments No. 4, No. 5, No. 6 and No. 7 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the BSE. All submissions should refer to File No. SR–BSE–92–04 and should be submitted by March 19, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the section 6(b)(5)[33] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,[34] and Rule 11b–1 thereunder,[35] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–BSE–92–04) is approved on a pilot basis until December 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4461 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

[33] 15 U.S.C. 78f(b)(5) (1988).

[34] 15 U.S.C. 78k(b) (1988).

[35] 17 CFR 240.11b–1 (1991).

[36] 15 U.S.C. 78s(b)(2) (1988).

[37] 17 CFR 200.30–3(a)(12) (1991).

[Rel. No. IC–19279; 812–7680]

Merrill Lynch Series Fund, Inc., et al.; Application for Exemptions

February 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch Series Fund, Inc. (the "Fund"); ML Life Insurance Company of New York, Merrill Lynch Life Insurance Company (together, the "Merrill Lynch Insurance Companies") and Monarch Life Insurance Company ("Monarch") (collectively, the "Participating Insurance Companies"); Variable Account A of Monarch Life Insurance Company ("Variable Account A"), ML of New York Variable Life Separate Account, ML of New York Variable Life Separate Account II, Merrill Lynch Variable Life Separate Account, and Merrill Lynch Life Variable Life Separate Account II (collectively, the "Separate Accounts").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under section 6(c) from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by the Separate Accounts and

any separate account organized in the future by the Merrill Lynch Insurance Companies that issues variable life insurance policies.

FILING DATES: The application was filed on February 11, 1991 and amended on September 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Merrill Lynch Series Fund, Inc., Merrill Lynch Life Insurance Company, Merrill Lynch Variable Life Separate Account and Merrill Lynch Life Variable Life Separate Account II, 800 Scudders Mill Road, Plainsboro, New Jersey 08536; Monarch Life Insurance Company and Variable Account A of Monarch Life Insurance Company, One Monarch Place, Springfield, Massachusetts 01133; ML Life Insurance Company of New York, ML of New York Variable Life Separate Account and ML of New York Variable Life Separate Account II, 717 Fifth Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Merrill Lynch Insurance Companies are wholly owned subsidiaries of Merrill Lynch & Co., Inc. ML Life Insurance Company of New York formerly was Royal Tandem Life Insurance Company. Merrill Lynch Life Insurance Company is the successor in interest to Tandem Insurance Group, Inc. pursuant to merger. Monarch is not affiliated with the Merrill Lynch Insurance Companies.

2. The Separate Accounts are organized as unit investment trusts that invest in shares of the Fund or in series of unit investment trusts sponsored by Merrill Lynch, Pierce, Fenner & Smith Incorporated.

3. The Fund is a Maryland corporation registered under the Act as an open-end management investment company. The Fund's investment adviser is Merrill Lynch Investment Management, Inc., doing business as Merrill Lynch Asset Management ("MLAM"), an investment adviser registered under the Investment Advisers Act of 1940. MLAM is a subsidiary of Merrill Lynch & Co., Inc. and an affiliate of the Merrill Lynch Insurance Companies.

4. Pursuant to an Indemnity Reinsurance and Assumption Agreement (the "Assumption Agreement") dated November 14, 1990, the Merrill Lynch Insurance Companies agreed to assume the obligations of Monarch with respect to certain of the variable life insurance policies issued by Monarch through its Variable Account A, with Monarch remaining obligated with respect to the policies not assumed by the Merrill Lynch Insurance Companies.

5. From the time the Fund was organized in 1980 until the Assumption Agreement, the Fund's shares were held only by Monarch's Variable Account A to fund benefits under variable life insurance policies issued by Variable Account A. Since the assumption of the policies, the Separate Accounts of each of the Participating Insurance Companies have been invested in shares of the Fund to fund benefits under variable life insurance policies assumed or issued by the respective Separate Accounts. The Fund does not anticipate that any other insurance company will participate in the Fund.

6. The Participating Insurance Companies desire to continue to invest in the Fund through their Separate Accounts although Monarch is not affiliated with the Merrill Lynch Insurance Companies. The Merrill Lynch Insurance Companies may organize additional separate accounts that would issue variable life insurance policies and that also would purchase and hold shares of the Fund.

7. The Participating Insurance Companies through their Separate Accounts which invest in the Fund rely, as appropriate, on Rules 6e–2 and 6e–3(T) under the Act, in connection with the issuance of variable life insurance policies.

Applicants' Legal Analysis and Conditions

1. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide life insurance company separate accounts organized as unit investment trusts partial exemptions from section 9(a) of the Act and from sections 13(a), 15(a) and 15(b) of the Act to the extent those sections may require "pass-through" voting with respect to an underlying fund's shares. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) limit their exemptive relief to unit investment trust separate accounts investing in management investment companies that offer their shares exclusively to separate accounts of a life insurer and any affiliated life insurer (the "Exclusivity Requirement"). The Merrill Lynch Insurance Companies and Monarch are not affiliated, and therefore cannot rely on Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

2. Accordingly, Applicants request exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit the Separate Accounts, and any separate account organized in the future by the Merrill Lynch Insurance Companies, offering single premium, scheduled premium and flexible premium variable life insurance policies to invest in the Fund ("shared funding"). Applicants assert that granting the requested relief will benefit all owners of variable life insurance policies issued by the Separate Accounts investing in the Fund by eliminating a significant portion of the costs of establishing and administering separate funds. In addition, Applicants assert that policyowners will benefit from the cost efficiencies and investment flexibility afforded by a large pool of funds, including economies of scale, greater potential for diversification, and the feasibility of adding new portfolios.

3. Section 9(a)(3) of the Act provides that a company is ineligible to serve as investment adviser or principle underwriter of any registered open-end investment company if an affiliated person, as defined by the Act, of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Subject to the Exclusivity Requirement, Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a) under certain circumstances. These exemptions limit the application of the disqualification provisions of section 9(a) to affiliated persons that directly participate in the management or administration of the underlying management company.

4. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9(a) in effect limits the amount of monitoring necessary to ensure compliance with section 9(a) to that which is necessary to exclude disqualified persons from the management or administration of the underlying investment company. Applicants argue that applying the monitoring requirements of section 9(a), solely because each of the Separate Accounts is not affiliated with each other Separate Account that invests in the Fund, would be unjustified and would not serve any regulatory purpose.

5. If the Exclusivity Requirement is met, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions to separate accounts organized as unit investment trusts from the "pass-through" voting requirements of sections 13(a), 15(a) and 15(b), and permit an insurance company to disregard policyowners' voting instructions under certain enumerated circumstances, such as if a state insurance regulator requires a change in the investments of the underlying fund, or in its principal underwriter or any investment adviser. Applicants state that pass-through voting privileges will be provided with respect to all Participating Insurance Companies to the extent required by applicable federal securities laws or regulations, or interpretations of such laws or regulations.

6. Applicants assert that shared funding with unaffiliated insurance companies is no different from shared funding with affiliated insurance companies domiciled in different states and subject to different state law requirements. A particular state insurance regulator may require action that conflicts with the requirements of other states in which an insurer offers its policies. Affiliation does not reduce any potential for conflicts between state regulatory requirements, nor does it eliminate any potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by policyowners. The right of insurance companies to disregard policyowners' voting instructions does not differ on the basis of whether the insurance companies are affiliated or unaffiliated, nor does it raise any issues different from those raised by the right of insurance companies to disregard policyowner voting instructions when required to do so by an insurance regulatory authority.

7. The fund and the Participating Insurance Companies will enter into a Participating Agreement designed to safeguard against any adverse effects that discrepancies between state regulations may produce. The Participation Agreement will provide that if a particular state insurance regulator's decision conflicts with other state regulators, the Participating Insurance Companies will resolve the conflict in the manner provided in the Participation Agreement. If a Participating Insurance Company veto of contract owner voting instructions represents a minority interest in the Fund or precludes a majority vote, the Participation Agreement also will provide procedures to resolve the conflict. Resolution of a conflict may require affected Participating Insurance Companies to withdraw their Separate Accounts' investment in the Fund. No charge or penalty will be imposed against a Separate Account for withdrawing its investment in the Fund to resolve a conflict under the terms of the Participation Agreement. A copy of the Participation Agreement is provided as Exhibit A to the application.

8. The Participation Agreement will provide that each Participating Insurance Company will designate an individual to monitor for the occurrence of any event that may give rise to the existence of any material irreconcilable conflict between the interests of the participants of all Separate Accounts investing in the Fund, and to advise each other Participating Insurance Company and the Fund's board of directors (the "Board") if any such event should occur. After such notice, the Participating Insurance Companies will consult with each other in good faith to determine whether the event gives rise to such a conflict, and if it does, to resolve any conflict within a reasonable period of time without resort to the provisions of the Participation Agreement. If the Participating Insurance Companies are unable to resolve any conflict, and if any Participating Insurance Company determines that such conflict is a material irreconcilable conflict, the Participation Agreement provides procedures to resolve the conflict. The procedures may require Participating Insurance Companies to withdraw their investment in the Fund within a reasonable time. No charge or penalty will be imposed on policyowners directly or indirectly as a result of such withdrawal.

9. The Participation Agreement provides for the resolution of conflicts as follows:

(a) If the event giving rise to the conflict involves the inability, for state insurance regulatory or any other reason, of one or more of the Participating Insurance Companies to invest in the Fund or one of its portfolios unless the investment adviser or principal underwriter of the Fund is changed, then such Participating Insurance Company or Companies shall withdraw its/ their investments from the Fund or such portfolio within a reasonable period of time; provided, however, that if such Participating Insurance Company or Companies own a majority of the then-outstanding shares of the Fund or such portfolio, the Participating Insurance Companies will advise the Board of the Fund that the agreement with the investment adviser or principal underwriter for the Fund or such portfolio is to be terminated and that the Participating Insurance Companies intend to vote their shares in the Fund to effect such termination. If the Board then does not terminate such agreement, the Participating Insurance Companies will recommend to their respective participants that the shares in the Fund be voted to effect such termination.

(b) If the event giving rise to the conflict involves a need to change the investment policy of the Fund or one of its portfolios so that one or more of the Participating Insurance Companies may continue to invest in the Fund or such portfolio, the Participating Insurance Companies agree to advise the Board of the Fund of the changes in the investment policies of the Fund or such portfolio that must be effected so as to permit all of the Participating Insurance Companies to continue to invest in the Fund or such portfolio (and if required to effect such change, the Participating Insurance Companies will recommend to their respective participants that the shares in the Fund be voted to effect such change).

(c) If it is determined by the Participating Insurance Companies that a material irreconcilable conflict exists and that one or more of the Participating Insurance Companies must withdraw its assets from the Fund or one of its portfolios (or if a Participating Insurance Company determines that it should withdraw its assets from the Fund so as to avoid a material irreconcilable conflict), such Company or Companies shall, at its/their own expense, take whatever steps are necessary to effect such withdrawal within a reasonable period of time, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any portfolio and reinvesting such assets in a different

investment medium (including another portfolio of the Fund) or submitting the question of whether such segregation should be implemented to a vote for all affected participants and, as appropriate, segregating the assets of any particular group (i.e. life insurance policyowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected participants the option of making such a change; and (ii) establishing a new registered management investment company or management separate account. No charge or penalty will be imposed on policyowners directly or indirectly as a result of such withdrawal. For purposes of this condition, in no event will the Fund or the investment adviser be required to establish a new funding medium for any variable life insurance policy. No Participating Insurance Company will be required to establish a new funding medium for any variable life insurance policy if an offer to do so has been declined by vote of a majority of participants materially adversely affected by the conflict.

10. The Participating Insurance Companies represent that they believe that the means set forth in the Participation Agreement for resolving any conflicts that may arise are fair to their respective participants and are an appropriate basis for the Participating Insurance Companies to invest in the Fund on a shared funding basis under the unusual circumstances of the Assumption Agreement.

11. The Participating Insurance Companies will provide pass-through voting to all policyowners so long as the Commission interprets the Act to require pass-through voting privileges. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under the Participation Agreement.

12. The Fund will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of shared funding may be appropriate. The Fund will disclose in its prospectus that shares of the Fund are offered to insurance company separate accounts, not all of which are affiliated with each other; the interests of various contractors participating in the Fund might at some time be in conflict; and the Participating Insurance Companies will monitor for any material conflicts and determine what action, if any, should be taken.

13. The Participating Insurance Company that initially advises of an event that may give rise to a conflict shall also advise the Board of the Fund whether such event in fact rise to a conflict, the action taken by the Participating Insurance Companies to resolve the conflict, and a description of the basis upon which any action taken is, under the circumstances, in the best interests of the policyowners of those insurance companies affected by the conflict or a majority in interest of such policyowners. If the Board is required to act to implement the action proposed to be taken by the Participating Insurance companies pursuant to the Participation Agreement to resolve a conflict, the Board will, in connection with determining whether or not to implement such action and with its fiduciary duties in this regard in mind, seek to obtain, and take into consideration, relevant information from the Participating Insurance Companies concerning the manner in which they, in resolving such conflict, determined that such action is, under the circumstances, in the best interest of the policyowners (or, if applicable, a majority in interest of the policyowners) affected by the action. The Board will reflect in its minutes any notification it receives of a potential or existing conflict and of any action taken with respect to the conflict, and will make the minutes available to the Commission upon request.

14. Applicants represent that a majority of the Board shall consist of persons who are not "interested persons" of the Fund as defined by section 2(a)(19) of the Act and the Rules thereunder, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director, then the operation of this condition shall be suspended: For a period of 45 days if the vacancy may be filled by the Board; for 60 days if a vote of shareholders is required to fill the vacancy; or for such longer period as the Commission may prescribe by order upon application.

15. The Fund will comply with all provisions of the Act requiring voting by shareholders.

16. Any action taken by any of the Participating Insurance Companies under the Participation Agreement will be carried out with a view only to the interest of the policyowners participating in the Fund. Applicants represent that the Fund's investment adviser will manage each portfolio of the Fund solely by reference to the investment objectives and policies of that portfolio (and the direction of the Fund's Board) and without reference to whether or not the particular strategies employed favor or disfavor a particular Participating Insurance Company. The Board of the Fund may establish new portfolios that will be available only to one or several of the Participating Insurance Companies but not all of the Participating Insurance Companies.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from section 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shared funding, meet the standards in section 6(c) of the Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4485 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19278; 812–8244]

PFL Life Insurance Co., et al.; Application for Exemption

February 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC or Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: PFL Life Insurance Company ("PFL Life"), PFL Endeavor Variable Annuity Account ("Variable Account"), and AEGON USA Securities, Inc. ("AEGON Securities"), collectively the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the assessment and deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as the funding medium for certain individual flexible premium variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 19, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations and Statements

1. PFL Life (formerly known as NN Investors Life Insurance Company) is a stock life insurance company incorporated under the laws of Iowa on April 19, 1961. PFL Life is an indirect wholly-owned subsidiary of AEGON USA, Inc. which, in turn, is indirectly owned by AEGON n.v.

2. The Variable Account is registered with the Commission under the 1940 Act as a unit investment trust. The Variable Account is divided into a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Endeavor Series Trust (the "Series Fund") or in the shares of the Janus Growth Portfolio of the WRL Series Fund, Inc. (the "Janus Growth Portfolio").

3. The Contracts may be purchased on a non-tax qualified basis or may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. The Contracts may be purchased with an initial premium payment of at least $25,000. Contract owners may allocate premium payments to one or more subaccounts of the Variable Account, each of which will invest in a corresponding portfolio of the Series Fund or the Janus Growth Portfolio. The minimum amount allocable to any subaccount is $500.

4. AEGON Securities formerly known as MidAmerica Management Corporation) will serve as the distributor and principal underwriter of the Contracts.

5. If an annuitant who is not the Policy owner dies before the annuity commencement date, then the owner will become the annuitant. In the event that the annuitant (who also is the Policy owner) dies before the annuity commencement date, a death benefit is payable to the beneficiary upon receipt of due proof of death, and will be the greater of (i) the Contract value on the date proof of death and election of the method of settlement are received, or (ii) the total premiums paid less any partial surrenders plus interest at an annual rate of 5 percent.

6. Prior to the annuity commencement date, a Contract owner may surrender all or a portion of the Contract value, or transfer Contract value between subaccounts of the Variable Account. The minimum amount that can be withdrawn from a subaccount is $500. The minimum amount that can be transferred from one subaccount to another is the lesser of $500 or the entire subaccount value. PFL Life currently imposes no charge for any transfers, but reserves the right to impose a $25 charge for the thirteenth and each subsequent transfer request made by the Contract owner during a single Contract year.

7. PFL Life will deduct an annual contract maintenance charge of the lesser of 2% of Contract value or $35 per Contract year. This charge will be deducted pro rata from each subaccount in which the Contract owner is invested at the end of each Contract year prior to the annuity commencement date (an upon full surrender on any date other than a Contract anniversary) to compensate PFL Life for the administrative services provided to Contract owners. PFL Life also deducts a daily administrative expense charge from the assets of each subaccount of the Variable Account. This charge is equal to an effective annual rate of .15% of the net assets of the subaccount. PFL Life does not anticipate any profit from any of these administrative charges, and will monitor its administrative expenses and the proceeds of these charges on at least an annual basis, to ensure compliance with Rule 16a–1 under the 1940 Act.

8. PFL Life will deduct the aggregate premium taxes paid on behalf of a particular Contract for the Contract value on the annuity commencement date (or upon full surrender or payment of the death benefit). No charges currently are made for federal, state, or local taxes other than premium taxes. PFL Life reserves the right to deduct such taxes from the Variable Account in the future.

9. PFL Life will impose a daily charge to compensate it for bearing certain mortality and expense risks under the Contracts. The charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately .45% is attributable to mortality risks, and approximately.80% is attributable to expense risks. The mortality risk borne by PFL Life arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live. The expense risk borne by PFL Life is that the deductions for administrative costs under the Contracts may be insufficient to cover the actual future costs incurred by PFL Life.

10. PFL also incurs a risk in connection with the death benefit guarantee. On the Contract owner's death, PFL will pay the greater of (a) the Contract value, or (b) premium payments (net of withdrawals) plus 5% annual interest.

11. The cost of distributing the Contracts will be met from funds from the general account of PFL Life, which may include amounts derived from the charge for mortality and expense risks.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charges under the Contracts.

2. Applicants submit that PFL Life is entitled to reasonable compensation for its assumption of mortality and expense risks, and that the charge of 1.25% for mortality and expense risks is consistent

with the protection of investors because it is a reasonable and proper insurance charge. The Applicants also submit that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon PFL Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. PFL Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on PFL Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to PFL Life. If a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by a sales charge. PFL Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by PFL Life at its administrative offices and will be available to the Commission.

4. PFL Life also represents that the Variable Account will only invest in management investment companies which undertake, in the event such companies adopt plans under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plans under Rule 12b–1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit the deduction of mortality and expense risk charges under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, the Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4486 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25744]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 19, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 15, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc., et al. (70–7910)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company and a debtor in possession under Chapter 11 of the United States Bankruptcy Code,[1] and its nonutility subsidiary companies, Columbia Gas System Service Corporation; Columbia LNG Corporation ("Columbia LNG"); Columbia Atlantic Trading Corporation; TriStar Ventures Corporation; Tristar Capital Corporation, 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc.; Columbia Coal Gasification Corporation, 900 Pennsylvania Avenue, Charleston, West Viriginia 25302; Columbia Gulf Transmission Company, 1700 MacCorkle Avenue, SE., Charleston, West Viriginia 25314; Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane, Inc.; Columbia Propane Corporation, 800 Moorefield Park Drive, Richmond, Virginia 23236; and Columbia's public-utility subsidiary companies, The Inland Gas Company, Inc., 20 Monchanin Road, Wilmington, Delaware 19807; Columbia Gas of Kentucky, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Pennsylvania, Inc.; and Commonwealth Gas Services, Inc., 200 Civic Center Drive, Columbus, Ohio 43215, have filed with the Commission a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and rules 43 and 45 thereunder.

Columbia LNG owns a liquefied natural gas ("LNG") receiving terminal and regasification facility located at Cove Point, Maryland (Facility") and an 87 mile pipeline extending from the facility to Loudon County, Virginia. The pipeline is currently being used for gas transportation but the Facility has been inactive since 1980.

Columbia attempted, successfully, to sell Columbia LNG to Shell LNG Company under a sales agreement that was approved by Commission order dated April 15, 1992 (HCAR No. 22515). An application-declaration concerning the termination of the sales agreement, related litigation and a settlement agreement is pending for this Commission (S.E.C. File No. 70–7921).

Columbia LNG now proposes to reactivate the Facility to provide peak shaving services to interested companies, including affiliated and nonaffiliated retail gas distribution companies. Applicants expect that this use of the Facility will be profitable. Columbia LNG also is continuing to investigate the possibility of resuming LNG imports to the Facility.

By order dated December 23, 1991 (HCAR No. 25438) ("Order"). Columbia was authorize to make advances on a short-term revolving basis, through unsecured notes, to Columbia LNG and Columbia LNG was authorized to issue such unsecured notes to Columbia through September 30, 1993. Columbia proposes to increase the maximum amount of such advances to Columbia LNG which may be made and outstanding during the period from

[1] Columbia and its wholly owned subsidiary, Columbia Gas Transmission Corporation, filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, In re The Columbia Gas System, Inc. and Columbia Gas Trans. Corp., No. 91–803.

$18.7 million, as previously authorized, to $26.7 million. The advances will be made under the same term and and conditions previously authorized in the October.

The application states that under Columbia LNG's new business plan, up to $8 million in addition to the original $18.7 million funding is needed to: (i) Service [Columbia LNG's] debt to Columbia through September, 1993; (ii) maintain the Facility and pipeline in good condition; (iii) accumulate the information required to prepare an application to FERC to obtain a certificate authorizing the proposed services; (iv) investigate opportunities for sources of permanent financing; and (v) begin other preliminary work related to the development of business opportunities at the Facility.

Eastern Utilities Associates, et al. (70–8137)

Eastern Utilities Associates ("EUA"), a registered holding company, and its wholly owned subsidiary company, EUA Ocean State Corporation ("EUA–OS"), both located at P.O. Box 2333, Boston Massachusetts 02107, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43(a) and 45 thereunder.

EUA proposes to fund EUA–OS, through December 31, 1994, up to an aggregate principal amount of $10 million, in the form of purchases of common stock, capital contributions, short-term loans and/or open account advances (collectively, "EUA Investments"). The short-term loans and/or open account advances will be evidenced by short-term notes issued by EUA–OS ("Short-Term Notes").

As an alternative to borrowing from EUA, EUA–OS proposes to issue and sell, through December 31, 1994, up to an aggregate principal amount of $5 million of short-term notes to banks ("Bank Notes"). The maximum amount of all borrowings from EUA and/or the banks will not exceed $10 million at any one time outstanding. EUA proposes to guarantee the Bank Notes.

EUA will finance and/or refinance the EUA Investments by short-term borrowings under its existing bank lines of credit evidenced by the issuance of notes ("Notes") which may be issued and renewed through December 31, 1994.

The Notes and Bank Notes will bear interest either at the commercial bank prime rate as adjusted from time-to-time or at available money market rates ("Cost of Funds") and will mature in not more than twelve months. Such borrowings from lending institutions will be made under the EUA system's existing credit lines. Short-Term Notes issued by EUA–OS to EUA will bear interest at EUA's effective Cost of Funds, mature in not more than twelve months from the date of issuance, and be prepayable at anytime without penalty.

The proceeds from the EUA Investments and/or Bank Notes will be used by EUA–OS for working capital purposes including the payment of interest on, and sinking fund payments on previously issued long-term notes and dividend payments to EUA. EUA–OS will repay the Short-Term Notes and the Banks Notes with the proceeds from cash distributions from EUA–OS partnership interests in the Ocean State Power Project and from EUA Investments.

Eastern Utilities Associates (70–8139)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and Rules 42, 50(a)(5) and 62 thereunder.

EUA proposes to put into effect certain amendments of the Eastern Utilities Associates Amended Restricted Stock Plan ("EUA Stock Plan"), the EUA Cogenex Corporation Restricted Stock Plan ("Cogenex Stock Plan") and the EUA Cogenex Corporation Performance Share Plan ("Cogenex Performance Plan") (collectively, "Plans"). In anticipation of the adoption of the proposed amendments, EUA purposes, through June 30, 1998, to: (1) Acquire EUA common shares ("Shares") from time to time on the open market; (2) acquire Shares which have been granted to but forfeited by employees under the Plans; (3) issue from time to time authorized but unissued Shares; and (4) reissue Shares granted to but forfeited by the employees. In order to receive approval of the EUA Stock Plan as revised by the proposed amendments, EUA proposes to solicit proxies from its shareholders for EUA's annual meeting to be held on May 17, 1993.

EUA proposes to acquire, issue or reissue, through June 30, 1998, up to a total of 500,000 Shares in the aggregate. Of this total amount of Shares to be acquired, issued or reissued, it is proposed that, through June 30, 1998: the Compensation and Nominating Committee ("Committee") of the Trustees of EUA grant up to 400,000 Shares pursuant to the EUA Stock Plan; the Committee and the Chief Executive Officer ("CEO") of EUA grant up to 50,000 shares pursuant to the Cogenex Stock Plan; and, the Committee and the CEO of EUA grant up to 50,000 shares pursuant to the Cogenex Performance Plan. Purchases of Shares on the open market will not exceed such numbers of Shares as are required to meet grants or allocations previously made or to be made in the ensuing twelve month period. The value of Shares granted or allocated to employees will be determined based on the market as of the date of purchase or issuance. EUA states that funds utilized for the purchase of Shares in the open market will be provided by internally generated cash, by EUA's dividend reinvestment plan and its employees' savings plan and by the issuance of new common shares through a public offering.

The net proceeds of the sale or sales of Shares will be used by EUA for the reduction of its outstanding short-term debt under existing lines of credit, the reduction of the need for such borrowings in the future and for other general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4462 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. IC–19276; 811–4426]

Van Kampen Merritt Insured Tax Free Income Fund, Inc.; Application for Deregistration

February 19, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Van Kampen Merritt Insured Tax Free Income Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 19, 1992, and amended on November 25, 1992, January 13, 1993, and January 28, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 16, 1993, and should be accompanied by proof of service on

applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end diversified management investment company, incorporated under the laws of the State of Maryland. SEC records indicate that on August 27, 1984, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act and a registration statement on Form N–1A under the Securities Act of 1933 and section 8(b) under the Act. SEC records indicate that applicant's registration statement was declared effective on October 25, 1984.

2. At a meeting held on March 4, 1987, applicant's board of directors approved an agreement and plan of reorganization (the "Plan"). Under the Plan, applicant would transfer all of its assets and liabilities to Van Kampen Merritt Insured Tax Free Fund (the "New Fund"). The New Fund is a newly formed sub-trust of Van Kampen Merritt Tax Free Fund, a Massachusetts business trust.

3. According to the proxy statement attached as an exhibit to the application, the principal purpose of the reorganization was to combine into a single trust all of the funds distributed by Van Kampen Merritt Inc. that invest primarily in tax-free debt securities, and thereby achieve significant operational and marketing advantages. Applicant's board determined that participation in the Plan was in the best interests of applicant and that the interests of the existing shareholders of applicant would not be diluted as a result of the Plan.

4. Applicant distributed proxy materials dated March 30, 1987, to its shareholders in connection with the proposed Plan. At applicant's annual meeting of shareholders held on May 8, 1987, applicant's shareholders approved the Plan. As of June 30, 1987, applicant had 30,343,778 shares outstanding, with an aggregate net asset value of $511,633,370, and a net asset value of $16.86 per share.

5. Pursuant to the Plan, on July 1, 1987, applicant transferred all of its assets and liabilities to the New Fund. As a result of the transaction, each shareholder of the applicant received an equal number of full and fractional shares of the New Fund having an equal net asset value in exchange for the shares of applicant's common stock previously held by such shareholders. Following the reorganization, a shareholder's investment in the New Fund was identical to such shareholder's investment in applicant prior to the transaction. In addition, applicant represents in its proxy statement that the New Fund will operate in the same manner and with the same investment objectives, policies, and restrictions as applicant had operated in the past.

6. The New Fund assumed the liabilities for all fees and expenses in the reorganization. Subsequent to the reorganization, applicant dissolved as a corporation in accordance with Maryland law.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4459 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. IC–19277; 811–4099]

Van Kampen Merritt Tax Free High Income Fund, Inc.; Application for Deregistration

February 19, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Van Kampen Merritt Tax Free High Income Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 19, 1992, and amended on November 25, 1992, January 13, 1993, and January 28, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 16, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end diversified management investment company, incorporated under the laws of the State of Maryland. SEC records indicate that on August 27, 1984, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act and a registration statement on Form N–1A under the Securities Act of 1933 and section 8(b) under the Act. SEC records indicate that applicant's registration statement was declared effective on October 25, 1984.

2. At a meeting held on March 4, 1987, applicant's board of directors approved an agreement and plan of reorganization (the "Plan"). Under the Plan, applicant would transfer all of its assets and liabilities to Van Kampen Merritt Tax Free High Income Fund (the "New Fund"). The New Fund is a newly formed sub-trust of Van Kampen Merritt Tax Free Fund, a Massachusetts business trust.

3. According to the proxy statement attached as an exhibit to the application, the principal purpose of the reorganization was to combine into a single trust all of the funds distributed by Van Kampen Merritt Inc. that invest primarily in tax-free debt securities, and thereby achieve significant operational and marketing advantages. Applicant's board determined that participation in the Plan was in the best interests of applicant and that the interests of the existing shareholders of applicant would not be diluted as a result of the Plan.

4. Applicant distributed proxy materials dated March 30, 1987, to its shareholders in connection with the proposed Plan. At applicant's annual meeting of shareholders held on May 8, 1987, applicant's shareholders approved the Plan. As of June 30, 1987, applicant had 19,689,251 shares outstanding, with an aggregate net asset value of $317,835,191, and a net asset value of $16.14 per share.

5. Pursuant to the Plan, on July 1, 1987, applicant transferred all of its assets and liabilities to the New Fund. As a result of the transaction, each shareholder of applicant received an equal number of full and fractional shares of the New Fund having an equal net asset value in exchange for the shares of applicant's common stock previously held by such shareholders. Following the reorganization, a shareholder's investment in the New Fund was identical to such shareholder's investment in applicant prior to the transaction. In addition, the New Fund will operate in the same manner and with the same investment objectives, policies, and restrictions as applicant had operated in the past.

6. The New Fund assumed the liabilities for all fees and expenses in the reorganization. Subsequent to the reorganization, applicant dissolved as a corporation in accordance with Maryland law.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4460 Filed 2–25–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use Passenger Facility Charge (PFC) at Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jackson Hole Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 29, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Manager of the Jackson Hole Airport Board, at the following address: P.O. Box 159, Jackson, WY 83001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport Board under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dakota Chamberlain, (303) 286–5543; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use at PFC at Jackson Hole Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 19, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Hole Airport Board was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: August 1, 1993
Proposed charge expiration date: January 31, 1996
Total estimated PFC revenue: $1,081,183.00

Brief description of proposed project: Airport planning studies; purchase safety equipment; runway safety project; apron safety projects; access control system and perimeter fencing and terminal building expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport Board at Jackson Airport.

Issued in Renton, Washington on February 19, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–4509 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Scenic Byways Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a meeting of the Scenic Byways Advisory Committee. The focus of the meeting will be to develop and make recommendations regarding minimum criteria and standards for use by State and Federal agencies in designating highways as scenic byways and all-American roads for the purpose of a national scenic byways program. The national scenic byways program is authorized by section 1047(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991.

DATES: March 30, 1993, 8:30 a.m. to 4:30 p.m., and March 31, 1993, 8:30 a.m. to 4:30 p.m. This meeting is open to the public.

ADDRESSES: 1440 New York Avenue, NW., suite 200, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Federal Highway Administration, Intermodal Planning Division, HEP–50, room 3301, 400 Seventh St., SW., Washington, DC 20590, (202) 366–0150. Office hours are 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48; sec. 1047, Pub. L. 102–240, 105 Stat. 1914, 1996.

Issued on: February 22, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93–4527 Filed 2–25–93; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S–807]

American President Lines, Ltd.; Application for Modification of Conditions of Three Waivers of Section 804(a) of the Merchant Marine Act, 1936, As Amended

American President Lines, Ltd. (APL), by application dated January 6, 1993, requests modification of conditions of three waivers of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL, to delete the prohibition of carrying military cargo on the foreign-flag vessels.

APL's Existing Services

APL now performs three subsidized containership services. Its Transpacific Trade Route (TR) 2 service covers (as now operated) the range of former TR 29 to/from California-Oregon-Washington for up to 188 annual sailings. Former TR 29 includes ports in the Far East on the continent of Asia from Asian Russia to Thailand, inclusive, Japan, Taiwan, and the Philippines.

APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf-Red Sea on up to 28 sailings to/from California and up to 80 sailings to/from Oregon-Washington. APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its TR 2 transpacific service primarily with line-haul vessels making direct calls at most major foreign TR 2 ports, including Yokohama, Kobe, Hakata, Nagoya, and Okinawa, Japan; Kaohsiung, Taiwan; Pusan, Korea; and Hong Kong.

The APL Extension services are currently performed by a feeder network that includes four subsidized U.S.-flag APL vessels providing service on a relay basis to Singapore, Colombo, and Fujayrah via Kaohsiung.

APL also operates chartered foreign-flag feeders in and to Extension areas in the range Indonesia-Red Sea under authority of a section 804 waiver (Waiver 6 in Appendix G to APL's operating subsidy contract). APL also operates foreign-flag feeders to Thailand and to the People's Republic of China in the TR 2 foreign area (Waivers 5 and 7 in APL's contractual Appendix G). Waivers 5, 6, and 7 are subject to the following conditions:

(a) The waiver may be canceled in whole or in part upon 90 days' written notice to APL, such notice to state the reason(s) for such cancellation;

(b) No change in the character of the services rendered between the ports as described above shall be made without prior notice to and approval by the Maritime Administration, otherwise the Maritime Administration may take such action as is appropriate;

(c) The Maritime Administration may upon its own motion modify the waiver to the extent deemed advisable upon proper written notice to the Operator, such notice to state the reason(s) for such modification;

(d) APL shall not carry military cargo on the foreign-flag vessels operated pursuant to this waiver;

(e) APL covenants that no ODS paid to APL will be paid to or used for the benefit of any foreign interest whose relationship with APL is approved by this waiver; and

(f) APL shall not enter into any charter arrangements involving vessels under the flag of the following countries, unless otherwise permitted by law:

Albania
Bulgaria
Estonia
Laos
Latvia
Lithuania
Mongolian People's Republic
Commonwealth of Independent States (formerly U.S.S.R.)
North Korea
Vietnam
Cambodia
Cuba
Libya
Iraq

(g) The Maritime Administration staff may request a cargo report for one or more voyages of such vessels.

APL is requesting that condition (d) for Waivers 5, 6, and 7 be deleted.

APL believes condition (d) can serve no useful purpose. According to APL's application, the Cargo Preference Act of 1904 requires defense cargoes to move on U.S.-flag vessels when available, therefore if there is a U.S.-flag service to a particular area, APL's foreign-flag feeder to such an area is prohibited by statute from carrying defense cargoes. However, lacking U.S.-flag service, APL avers there can be no valid reason to bar APL from carrying defense cargoes utilizing a combination of U.S.-flag line haul vessel and foreign-flag feeder vessel.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on March 8, 1993. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

Dated: February 22, 1993.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93–4454 Filed 2–25–93; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant in part of petition for exemption.

SUMMARY: This notice grants in part the petition by General Motors Corporation (GM) for exemption from the parts marking requirements of the vehicle theft prevention standard for the Cadillac Eldorado (Eldorado) and Cadillac Seville (Seville) car lines for Model Year (MY) 1994, pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, for MY 1994 and beyond. GM is required to mark only the engines and transmissions of the exempted car lines.

DATES: The exemption granted by this notice is effective beginning with the 1994 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: On November 5, 1992, the agency received a submission from GM requesting an exemption from the theft prevention standard for its Cadillac Eldorado (Eldorado) and Cadillac Seville (Seville) car lines, pursuant to 49 CFR part 543 Exemption From Vehicle Theft Prevention Standard, for MY 1994 and beyond. GM did not request confidential treatment for any of the information provided in its petition.

The information submitted by GM constitutes a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Accordingly, November 5, 1992 is the date on which the statutory 120 day period for processing GM's petition began.

In its petition for the Eldorado and Seville car lines, GM requests an exemption from parts marking based on the inclusion of the "PASS-Key II" theft deterrent system as standard equipment for these car lines. GM noted that the "PASS-Key II" is a modification of the"PASS-Key I" theft deterrent system. The petitioner also noted that in August 1989 and on several occasions since, the agency has determined that the "PASS-Key" system, installed as standard equipment in various GM car lines, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (see e.g., 54 FR 33655, August 15, 1989). In a February 7, 1992 letter to GM, the agency determined that the changes in "PASS-Key II" constituted a *de minimis* change in the "PASS-Key" system that was the basis for the agency's previous granting of a theft exemption for a car line that had, as standard equipment, the "PASS-Key" system.

The "PASS-Key II" theft deterrent system utilizes an ignition key, an ignition lock cylinder and a decoder module. The conventional mechanical code permits the key to release the steering wheel and transmission shift lever locks. Before the vehicle can be started, the electrical resistance of a pellet embedded in the shank of the key must be sensed by elements in the lock cylinder and its value compared to a fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the engine control module. Recognition of the signal by the engine control module allows fuel injector pulses to begin. If a key other than the one with proper resistance for that vehicle is inserted, the decoder module will shut down for a period of three minutes plus or minus 18 seconds. GM states that this period of time is controlled by a timer within the decoder module, and is not a programmable feature. Unlike "PASS-Key," in "PASS-Key II," the timer for the decoder module does not reset back to zero if further resistance comparisons are made while the decoder module is shut down. GM has stated that despite this difference, a similar level of performance will continue since the module, whole shut down, will ignore any further attempts to start the vehicle by means of a key with an improper pellet resistance. GM claims that any process of trial and error using various keys with different resistance pellets, after the initial three minute shut down period, will result in the module shutting down again.

The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is located in the engine compartment. GM states that unlike many other theft deterrent systems, removing and subsequently reapplying vehicle power does not alter "PASS-Key II" performance.

GM states that "PASS-Key II" is passive in that the system becomes fully functional once the ignition is turned off and the key is removed. No further operator action is required for activation. GM states that because "PASS-Key II" is fully operational once the engine has been turned off and the key removed, it has not provided specific visual or audio warnings, beyond the key warning buzzer, that unauthorized attempts have been made to enter or move the vehicles. However, the "PASS-Key II" system includes a starter interrupt function which, when activated, makes the vehicle inoperable.

In order to draw attention to improper use of a key to start the vehicle, GM has installed a yellow "Security" light inside the passenger compartment of the Eldorado and the Seville. This light is designed to activate if the proper key with a dirty or contaminated resistor pellet is used and the vehicle does not start. If this happens, it is necessary to clean the key and delay a further attempt to start the engine until the "PASS-Key II" timer has run its course. The "Security" light is designed to illuminate also if a key with the proper mechanical but improper electrical code is used to try and start the vehicle.

In addition, for the Eldorado and Seville car lines, GM has placed a "Driver Information Center" that displays appropriate messages to the operator if a dirty or improper key should be used, or if there should be a "PASS-Key" malfunction.

GM states that a premise for the design of any theft deterrent system in its products has been that a failure in such a system would not affect a running vehicle. Although it may not be possible to restart a vehicle after such a failure, that failure would not stop an engine that has been started. That criterion has been met in "PASS-Key II." Once an "Engine Running" signal has been identified by the engine control module, a "PASS-Key II" failure will not cause the engine to stop.

GM's analysis of the failure mode effects of the "PASS-Key II" system indicated that the component with the highest probability for failure was the ignition lock cylinder with its key, wiring, contacts, and rotational motion. A 52,000 cycle automated bench test of the key, ignition lock cylinder, wiring, and "PASS-Key II" electronics module was conducted over a temperature range of approximately −40 degrees Fahrenheit to +212 degrees Fahrenheit. GM stated that each cycle consisted of inserting the key, rotating the cylinder to its "Start" position and then measuring the output from the electronics module to assure that the proper signals for the Starter Enable Relay and engine control module were present. The absence of either signal would terminate the test.

GM states that the "PASS-Key II" decoder module has undergone other durability tests to ensure that the component meets or exceeds specified performance requirements over an equivalent of approximately 10 years of vehicle life. These other tests were: A power and temperature cycling test; high temperature endurance test; humidity test; moisture susceptibility test; and random vibration durability tests. As part of the validation process for the "PASS-Key" system, GM subjected the starter enable relay to testing to ensure component reliability. GM states that the same component is used in "PASS-Key II."

GM also states that during 225,000 miles of durability testing on preproduction MY 1994 Seville and Eldorado prototype and pilot vehicles equipped with "PASS-Key II," there were no system failures. GM states that

since "PASS-Key II" system failures have the potential to affect owner satisfaction, it will continue to carefully monitor warranty data and make any necessary changes to improve system reliability.

Since the "PASS–Key II" system has been installed in GM vehicles as standard equipment only since the 1992 model year, GM states that directly relevant theft data are not yet available. GM asserts that since the "PASS–Key II" system has been designed to provide the same kind of protection as the "PASS–Key" system, theft data for "PASS–Key" equipped vehicles can be used to form the basis for GM's belief that the "PASS–Key II" system will be effective in reducing and deterring motor vehicle theft. The agency concurs that theft data for "PASS–Key" equipped vehicles is probative of the likelihood of success of the "PASS–Key II" system in reducing and deterring vehicle theft.

To substantiate its statements on the "PASS–Key" antitheft system's effectiveness, GM provided data on Chevrolet Camaro, Pontiac Firebird, Cadillac Seville, Cadillac Eldorado, and Cadillac DeVille/Fleetwood car line theft rates for MYs 1986 through 1990. "PASS–Key" was made standard equipment on the Camaro and Firebird car lines beginning with the 1989 model, on the Seville and Eldorado beginning with MY 1989, and in the DeVille/Fleetwood with the 1990 model. The data provided by GM is reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is NHTSA's official source of theft data (See 50 FR 46666, November 12, 1985). The NCIC receives reports on all thefts.

The NCIC data reported by GM showed that Firebird, Camaro, Seville, Eldorado and DeVille/Fleetwood theft rates (per thousand vehicles) by Model Year were: For 1986, 27.83 for the Firebird, 29.49 for the Camaro, 1.71 for the Seville, 2.27 for the Eldorado, 7.11 for the DeVille/Fleetwood; for 1987, 30.14 for the Firebird, 26.03 for the Camaro, 9.24 for the Seville, 3.90 for the Eldorado, 6.16 for the DeVille/Fleetwood; for 1988, 29.34 for the Firebird, 25.74 for the Camaro, 9.54 for the Seville, 3.16 for the Eldorado, 7.19 for the DeVille/Fleetwood; for 1989, 8.99 for the Firebird, 8.69 for the Camaro, 8.31 for the Seville, 2.35 for the Eldorado, 5.57 for the DeVille/Fleetwood; and for 1990, 8.56 for the Firebird, 9.04 for the Camaro, 9.86 for the Seville, 2.48 for the Eldorado, 3.81 for the DeVille/Fleetwood.

GM stated a belief, based on the decreases in thefts of the Firebird and the Camaro car lines during the 1989 model year, and the DeVille/Fleetwood car line during the 1990 model year, which occurred with the implementation of "PASS–Key" as standard equipment, that the "PASS–Key" system is "extremely effective in deterring motor vehicle theft." GM stated that based on the performance of "PASS–Key" on other models and its similarity of design and functionality to the "PASS–Key II" system, it believes that "PASS–Key II" will be at least as effective as the first generation "PASS–Key" system when "PASS–Key II" becomes standard on the Eldorado and Seville car lines.

NHTSA believes that there is substantial evidence indicating that the antitheft system to be installed as standard equipment will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information GM submitted with its petition and on other available information. The agency believes that the device will provide all but one of the types of performance listed in § 543.6(a)(3); promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The single exception is that the device lacks an alarm which would attract attention to unauthorized entries.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. This information included a description of reliability and functional tests conducted by GM for the antitheft system and its components. GM presented extensive data on the life cycle test results of the "PASS-Key" ignition lock system, and durability testing of prototype MY 1994 Sevilles and Eldorados equipped with "PASS-Key II."

The decision to grant this exemption is consistent with earlier agency exemption decisions. As the petitioner noted, the "PASS-Key" ignition lock system has been the basis for the agency's exempting, in part, several high theft GM car lines from the requirements of 49 CFR part 541. The following GM car lines have the "PASS-Key" system as standard equipment, and have been exempted in part from the requirements of 49 CFR part 541: The Chevrolet Camaro and Pontiac Firebird, beginning with MY 1990 (see 54 FR 3365, August 15, 1989); the Cadillac DeVille/Fleetwood and Oldsmobile 98, beginning with MY 1991 (see 55 FR 17854, April 27, 1990); and the Pontiac Bonneville and Buick Park Avenue, beginning with MY 1992 (see 56 FR 14413, April 9, 1991). In a **Federal Register** notice of March 26, 1992, the agency granted an exemption in part for the Oldsmobile 88 Royale and Buick LeSabre car lines, beginning from MY 1993, based on these car lines' incorporation, as standard equipment, of the "PASS-Key II" system (see 57 FR 10517).

For the foregoing reasons, the agency hereby exempts the MY 1994 Cadillac Eldorado and Cadillac Seville car lines in part from the requirements of 49 CFR part 541. GM will be required to mark only the engines and transmissions, and replacement engines and transmissions, for the vehicles in these car lines. Those major parts were chosen since they are among the most interchangeable of the 14 parts for which labeling is required.

The reason for the partial grant is that the GM antitheft system for the Eldorado and Seville includes neither an audio nor a visual alarm system. As such, the GM system lacks, as standard equipment, an important feature that the agency has defined in its rulemaking on part 543 as one of several desirable attributes which contribute to the effectiveness of an antitheft system: Automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

The agency acknowledges that, since Model Year 1989, the theft rates for the Firebird/Camaro car lines have been reduced substantially. The agency notes, however, that based on two years of data, theft rates for the Firebird, Camaro, DeVille/Fleetwood, and Seville are still at levels higher than the 1983/84 median theft rate of 3.2712. The agency believes that more than two years of data are needed in order to accurately evaluate the effectiveness of an antitheft device.

If GM decides not to use the partial exemptions for the MY 1994 Eldorado and Seville car lines, it should formally notify the agency. If such a decision is made, these car lines must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such comparisons, which the agency has made on the basis of the limited data available.

NHTSA notes that if GM wishes in the future to modify the device on which this partial exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption."

The agency wishes to minimize the administrative burden which § 543.9(c) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50 and 501.4.

Issued on: February 22, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–4452 Filed 2–25–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 22, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0059.
Form Number: CF 1303.
Type of Review: Extension.
Title: Ship's Stores Declaration.
Description: Customs Form 1303 is used by the importing carrier to list articles to be retained on board the vessel such as sea stores, ships stores, or bunker coal or bunker oil.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 8,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 26,000 hours.
OMB Number: 1515–0062.
Form Number: CF 1301.
Type of Review: Extension.
Title: General Declaration.
Description: The Customs Form 1301 is used as the form by which the master of the vessel can set forth various items of information as to the location of the vessel in the port, or the itinerary prior to arrival in the U.S. and the itinerary after leaving the U.S.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 8,000.
Estimated Burden Hours per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17,326 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–4449 Filed 2–25–93; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0014.
Form Number: None.
Type of Review: Revision.
Title: Comptroller's Manual for Corporate Activities.
Description: The Comptroller's Manual for Corporate Activities explains the Office of Comptroller of the Currency's (OCC's) policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions and corporate expansion and structural change by existing national banks.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Recordkeepers: 3,650.
Estimated Burden Hours Per Respondent: 7 hours, 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 43,155 hours.
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–4450 Filed 2–25–93; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0837.
Regulation ID Number: 26 CFR part 503.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Germany.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, businesses or other for-profit.
Estimated Number of Respondents: 65.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 16 hours.

OMB Number: 1545–0844.
Regulation ID Number: 26 CFR part 502.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Greece.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, businesses or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.

OMB Number: 1545–0846.
Regulation ID Number: 26 CFR part 509.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Switzerland.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, businesses or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.

OMB Number: 1545–0848.
Regulation ID Number: 26 CFR part 521.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Denmark.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–0849.
Regulation ID Number: 26 CFR part 517.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Pakistan.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, businesses or other for-profit.
Extimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5 hours.

OMB Number: 1545–1026.
Form Number: IRS Form 8645.
Type of Review: Extension.
Title: Soil and Water Conservation Plan Certification.
Description: Form 8645 is used to certify that conservation expenses claimed as a deduction on Schedule F, (Form 1040), Form 1040–PR, and Form 1040–SS are part of an approved plan for their farm area. The approved plan requirement comes under Code section 175(c)(3).
Respondents: Farms.
Estimated Number of Respondents/Recordkeepers: 85,000.
Estimated Burden Hours Per Respondent/Recordkeeping:

Recordkeeping	7 minutes.
Learning about the law or the form.	5 minutes.
Preparing the form	8 minutes.
Copying, assembling, and send the form to IRS.	11 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 44,200 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Louis K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–4451 Filed 2–25–93; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; American Resources Insurance Co., Inc., Fraudulent Bonding

Federal bond-approving officers are advised that American Resources Insurance Co., Inc. of Mobile, Alabama, has informed the Treasury Department that fraudulent bonds have been issued under their name.

All bonds received in the name of American Resources Insurance Co., Inc. should be verified as to their authenticity with James Kuhl, Senior Underwriter or Elden Cox, Surety Underwriter, of American Resources Insurance Co., Inc. at (800) 432–9310. In addition, the authenticity of bonds currently in force, that were written during the past year, should also be verified.

Dated: February 18, 1993.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 93–4428 Filed 2–25–93; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I

hereby determine that the object to be included in the exhibit "Splendid Legacy: The Havemeyer Collection" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit object at The Metropolitan Museum of Art, New York, New York, beginning on or about March 27, 1993, to on or about June 20, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6075; the address is room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Dated: February 23, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–4592 Filed 2–25–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 37
Friday, February 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:02 a.m. on Tuesday, February 23, 1993, the Corporation's Board of Directors determined, on motion of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding a contract for wide area network services.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's Strategic Plan.

By the same majority vote, the Board determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: February 23, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–4583 Filed 2–23–93; 4:13 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:22 a.m. on Tuesday, February 23, 1993, the Corporation's Board of Directors determined, on motion of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of matters relating to the Corporation's liquidation activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: February 23, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–4584 Filed 2–23–93; 4:13 pm]

BILLING CODE 6714–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Tuesday, March 2, 1993, 3:30 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED:

Discussion by the National Commissioners involving one case pursuant to an appeal under 28 CFR Section 2.27. This case was originally heard by an examiner panel wherein the inmate of Federal prison has been paroled and is contesting the revocation of parole.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: February 23, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–4689 Filed 2–24–93; 2:57 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, March 2, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, March 2

3:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

TO VERIFY THE STATUS OF MEETING CALL: (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: February 23, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–4608 Filed 2–24–93; 10:54 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 1, 1993.

A closed meeting will be held on Tuesday, March 2, 1993, at 10:00 a.m. An open meeting will be held on Friday, March 5, 1993, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 2, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Friday, March 5, 1993, at 10:00 a.m., will be:

The Commission will meet with the Public Oversight board (POB) of the American Institute of Certified Public Accountants to discuss the POB's oversight of the accounting profession's quality control program, including recommendations for change in that program as discussed in the recently published "Report of the Public Oversight Board on Issues Confronting the Accounting Profession". The POB is an independent board of prominent individuals established by the AICPA to oversee the activities of the SEC Practice Section of the AICPA's Division for CPA Firms and to represent the public interest in the performance of its oversight function. Topics of discussion are expected to include POB and Commission oversight of the peer review and quality control inquiry processes, litigation reform and the recently published report. For further information, please contact Mike Kigin at (202) 272–2165 or Bob Burns at (202) 272–2130.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Chris Sakach at (202) 272–2300.

February 23, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4697 Filed 2–24–93; 3:51 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 58, No. 37
Friday, February 26, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4535-5]

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes

Correction

In proposed rule document 92-28292 beginning on page 62608 in the issue of Thursday, December 31, 1992, portions of §§ 63.128, 63.131, 63.143, 63.144, 63.145, and 63.150 were illegible. For the convenience of the reader, the sections listed above are reprinted in their entirety.

§ 63.128 Transfer operations provisions—test methods and procedures.

(a) A performance test is required for determining compliance with the reduction of organic HAP emissions in § 63.126(b) for all control devices other than: Vapor balancing systems; flares; and certain boilers and process heaters listed in paragraph (c) of this section. Performance test procedures are as follows:

(1) A performance test shall consist of three runs.

(2) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(3) For control devices capable of continuous vapor processing, each run shall represent at least one complete filling period, during which liquid organic HAP's are loaded.

(4) For intermittent vapor processing systems, each run shall represent at least one complete control device cycle.

(5) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of sampling sites.

(i) For an owner or operator complying with the 98-percent organic HAP reduction requirements in § 63.126(b)(1), sampling sites shall be located as specified in paragraph (a)(5)(i)(A) or (a)(5)(i)(B).

(A) Sampling sites shall be located at the inlet and outlet of the control device, except as provided in paragraph (a)(5)(i)(B).

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all vent streams and primary and secondary fuels introduced into the boiler or process heater. A sampling site shall also be located at the outlet of the boiler or process heater.

(ii) For an owner or operator complying with the 20 parts per million by volume limit in § 63.126(b)(1), the sampling site shall be located at the outlet of the control device.

(6) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

(7) For the purpose of determining compliance with the 20 parts per million by volume limit in § 63.126(b)(1), Method 18 or Method 25A of part 60, appendix A shall be used to measure either organic compound concentration or organic HAP concentration, except as provided in paragraph (a)(9) of this section.

(i) If Method 25A is used, the following procedures shall be used to calculate the concentration of organic compounds (C_T):

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A shall be twice the concentration being measured.

(C) Use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (a)(7)(v) of this section.

(ii) If Method 18 is used to measure the concentration of organic compounds, the organic compound concentration (C_T) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_T = \sum_{j=1}^{n} C_j$$

where:

C_T=Total concentration of organic compounds (minus methane and ethane), dry basis, parts per million by volume.

C_j=Concentration of sample components "j", dry basis, parts per million by volume.

n=Number of components in the sample.

(iii) If an owner or operator uses Method 18 to compute total organic HAP concentration rather than organic compounds concentration, the equation in paragraph (a)(7)(ii) of this section shall be used except that only organic HAP species shall be summed. The list of organic HAP's is provided in § 63.104 of subpart F of this Part.

(iv) The emission rate correction factor or excess air integrated sampling and analysis procedures of Method 3B of part 60, appendix A shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic HAP or organic compound samples, and the samples shall be taken during the same time that the organic HAP or organic compound samples are taken.

(v) The organic compound concentration corrected to 3 percent oxygen (C_c) shall be calculated using the following equation:

$$C_c = C_T \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_c=Concentration of organic compounds corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_T=Total concentration of organic compounds, dry basis, parts per million by volume.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

(8) For the purpose of determining compliance with the 98-percent reduction requirement in § 63.126(b)(1), Method 18 or Method 25A of 40 CFR part 60, appendix A shall be used, except as provided in paragraph (a)(9) of this section.

(i) For the purpose of determining compliance with the reduction efficiency requirement, organic compound concentration may be measured in lieu of organic HAP concentration.

(ii) If Method 25A is used to measure the concentration of organic compounds (C_T), the principal organic HAP in the vent stream shall be used as the calibration gas.

(A) An emission testing interval shall consist of each 5-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(B) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(C) The mass at the inlet and outlet of the control device during each testing interval shall be calculated as follows:

$M_j = FKV_sC_T$

where:

M_j=Mass of organic compounds emitted during testing interval j, kilograms.

V_s=Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters mercury, standard cubic meters.

C_T=Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

K=Density, (kilograms per standard cubic meter organic HAP).

$F=10^{-6}$=Conversion factor, (cubic meters organic HAP per cubic meters air) (parts per million by volume)$^{-1}$.

(D) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T}$$

where:

E_i, E_o=Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the combustion or recovery device, kilograms per hour.

M_{ij}, M_{oj}=Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T=Total time of all testing intervals, hours.

n=Number of testing intervals.

(iii) If Method 18 is used to measure organic compounds, the mass rates of organic compounds (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}MW_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}MW_{oj}\right)Q_o$$

where:

C_{ij}, C_{oj}=Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

MW_{ij}, MW_{oj}=Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

(iv) Where Method 18 or 25A is used to measure the percent reduction in organic compounds, the percent reduction across the control device shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i}(100)$$

where:

R=Control efficiency of control device, percent.

E_i=Mass emitted or mass flow rate of organic compounds at the inlet to the combustion or recovery device as calculated under paragraph (a)(8)(ii)(D) or (a)(8)(iii) of this section, kilogram per hour.

E_o=Mass emitted or mass flow rate of organic compounds at the outlet of the combustion or recovery device, as calculated under paragraph (a)(8)(ii)(D) or (a)(8)(iii) of this section, kilogram per hour.

(9) The owner or operator may use any methods or data other than Method 18 or Method 25A, if the method or data has been validated according to Method 301 of 40 CFR part 63 of appendix A.

(b) When a flare is used to comply with § 63.126(b)(2), the owner or operator shall comply with the flare provisions in § 63.11 of subpart A of this part.[11]

(1) The compliance determination required by § 63.6(g) of subpart A of this part [12] shall be conducting using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to Method 22.

(i) The compliance determination shall be conducted during at least three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions shall encompass each loading cycle.

(ii) Integrated sampling to measure vent stream flow rate shall be performed continuously during each loading cycle.

(2) An owner or operator is not required to conduct a performance test to determine the percent emission reduction or outlet HAP or TOC concentration when a flare is used.

(c) An owner or operator is not required to conduct a performance test when any device specified in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section is used.

[11] The EPA will propose subpart A in the future.

[12] See Footnote 11.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H.

(3) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(4) A vapor balancing system.

(d) An owner or operator using a combustion device followed by a scrubber to control a halogenated transfer vent stream in compliance with § 63.126(d) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the 99 percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber. For an owner or operator complying with the 0.5 milligram per dry standard cubic meter outlet emission limit for each hydrogen halide and halogen, the sampling site shall be located at the outlet of the scrubber.

(2) Except as provided in paragraph (d)(5) of this section, Method 26 or 26A of part 60, appendix A, shall be used to determine the concentration in milligrams per dry standard cubic meter, corrected to a 3 percent oxygen basis, of the hydrogen halides and halogens that may be present in the stream.

(3) To determine compliance with the 99 percent emissions reduction limit, the emissions for any hydrogen halides and halogens present at the scrubber inlet shall be summed together. The mass emissions of the compounds present at the scrubber outlet shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the 0.5 milligram per dry standard cubic meter emission limit, the test results must show that the concentration of each individual compound measured at the scrubber outlet, corrected to 3 percent oxygen, is below 0.5 milligram per dry standard cubic meter or is below detectable levels.

(5) The owner or operator may use any other method or data to demonstrate compliance if the method or data has been validated according to the protocol of Method 301 of 40 CFR part 63, appendix A.

(e) The owner or operator shall inspect the vapor collection system and vapor balancing system for detectable emissions greater than 500 parts per million.

(1) Method 21 of 40 CFR part 60, appendix A and visual inspections shall be used.

(2) Inspections shall be performed only while a tank truck or railcar is being loaded.

(3) Inspections shall be performed at the following times:

(i) By the compliance date and annually thereafter to demonstrate compliance with § 63.126(a)(3) and (4), or (b)(3); and

(ii) Before each performance test required to demonstrate compliance with § 63.126(b)(1).

(f) For the purposes of demonstrating vapor tightness to determine compliance with § 63.126(e)(2), the following procedures and equipment shall be used:

(1) The pressure test procedures specified in Method 27 of part 60, appendix A; and

(2) A pressure measurement device which has a precision of ±2.5 millimeters of mercury and which is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

* * * * *

§ 63.131 Process wastewater provisions—flow diagrams and tables.

(a) The flow diagrams in this section are provided as guidance for understanding the basic interrelationships of the wastewater provisions for process units at new and existing sources. Paragraphs (a)(1) through (a)(8) of this section briefly outline the flow diagrams provided.

(1) Figure 1 provides an overview of the HON wastewater provisions,

(2) Figure 2 outlines the process for determining whether a stream meets the HON definition of a process wastewater stream,

(3) Figure 3 summarizes Group 1 and Group 2 determinations for wastewater streams containing Table 8 HAP's,

(4) Figure 4 summarizes Group 1 and Group 2 determinations for wastewater streams containing Table 9 HAP's,

(5) Figure 5 summarizes compliance options for control of wastewater streams containing Table 8 HAP's,

(6) Figure 6 summarizes compliance options for control of wastewater streams containing Table 9 HAP's,

(7) Figure 7 presents the process unit alternative compliance option for control of wastewater streams at existing sources containing Table 9 HAP's, and

(8) Figure 8 outlines compliance options for control of residuals.

(b) Because the flow diagrams are intricately related to Table 8 and Table 9 and for easy reference, these two tables are also included in this section.

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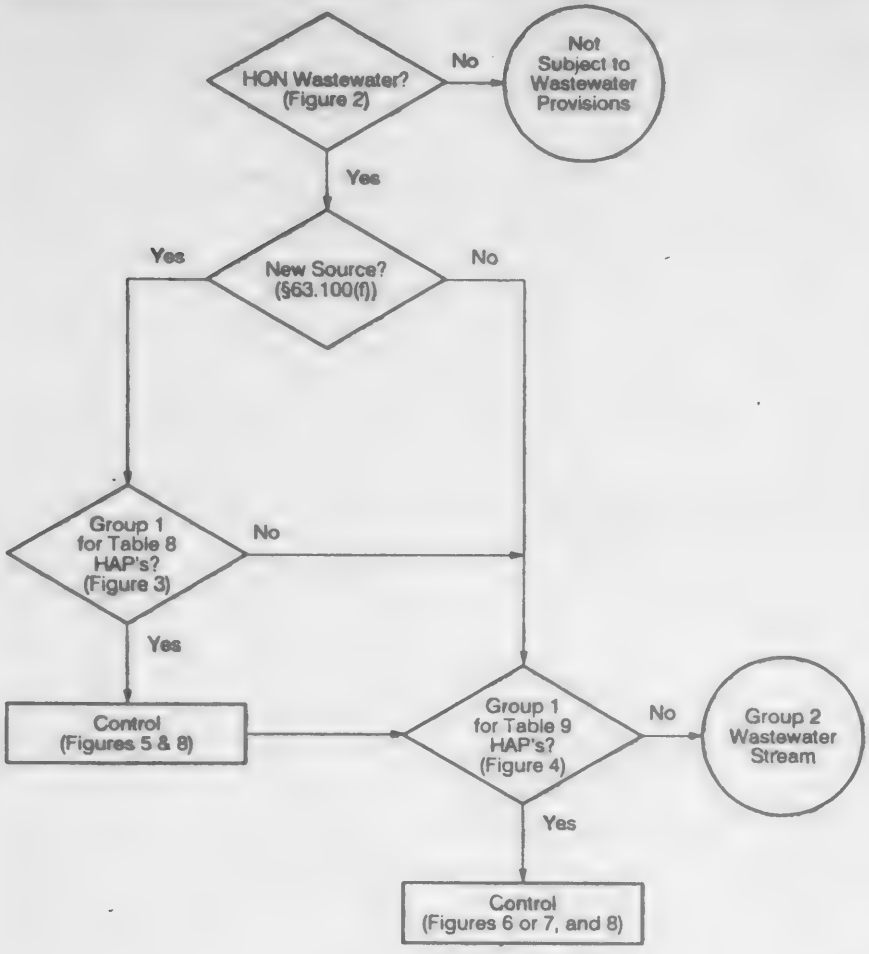

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Figure 1. Overview of HON Wastewater Provisions

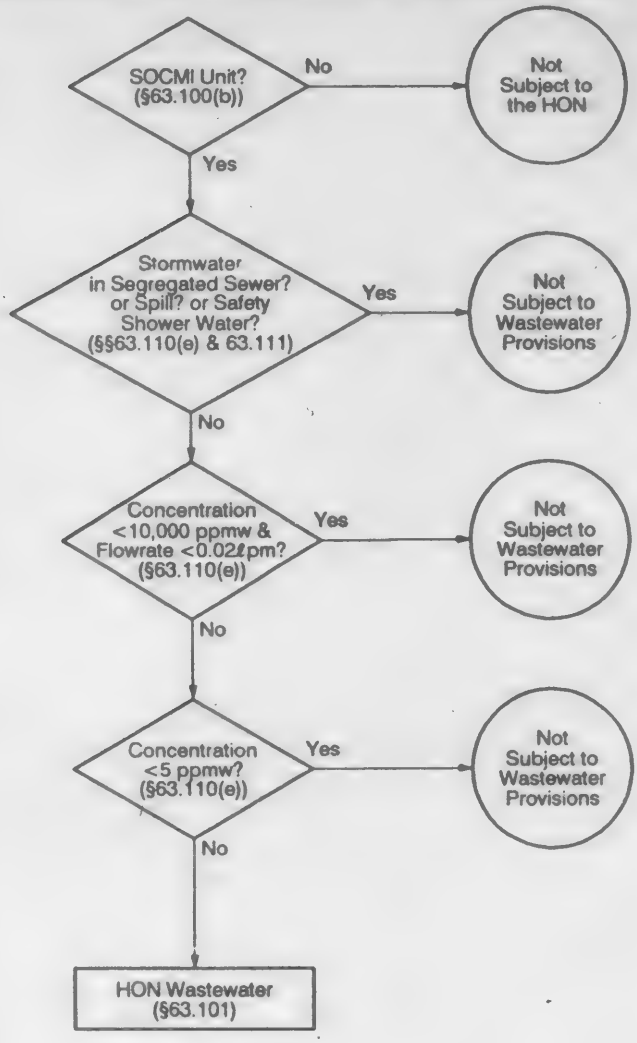

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Figure 2. HON Wastewater Determination

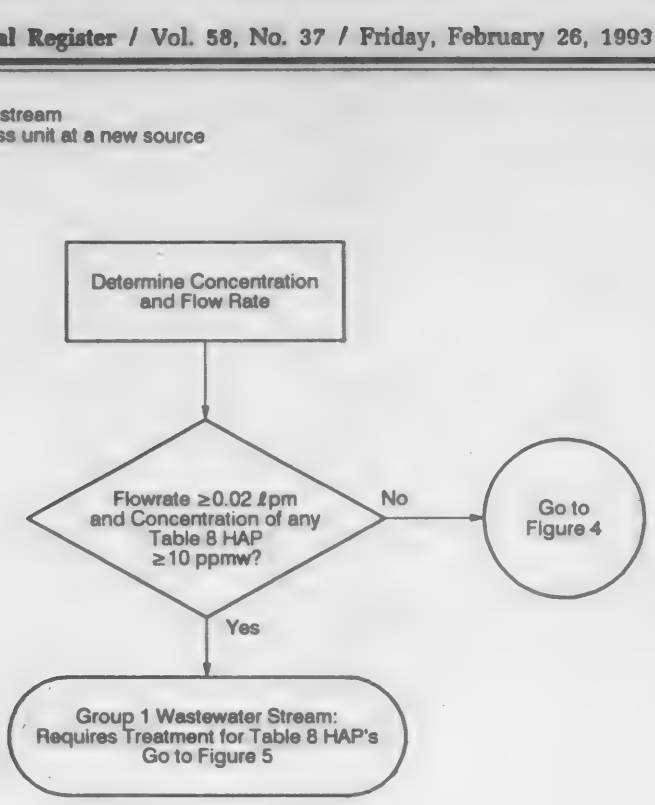

Figure 3 Group 1 and Group 2 Determinations for Wastewater Streams - Table 8 HAP's (Refer to §63.132(c))

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Do for each wastewater stream

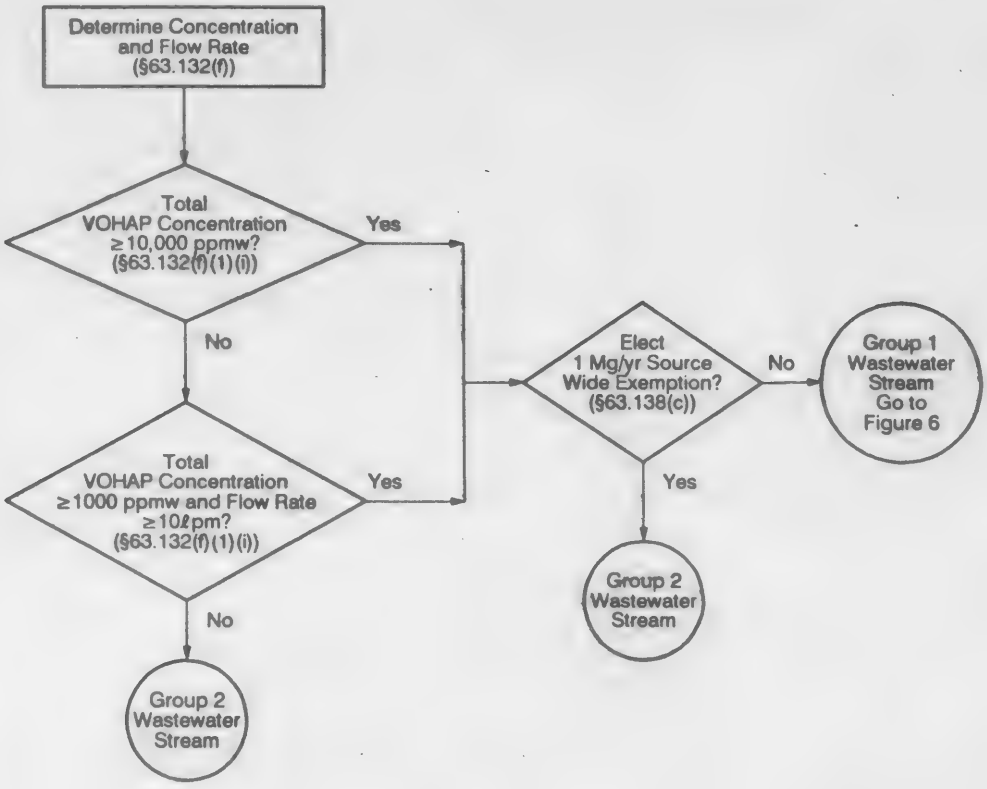

Figure 4. Group 1 and Group 2 Determinations for Wastewater Streams - Table 9 HAP's (Refer to §§63.132(f) and 63.138(c))

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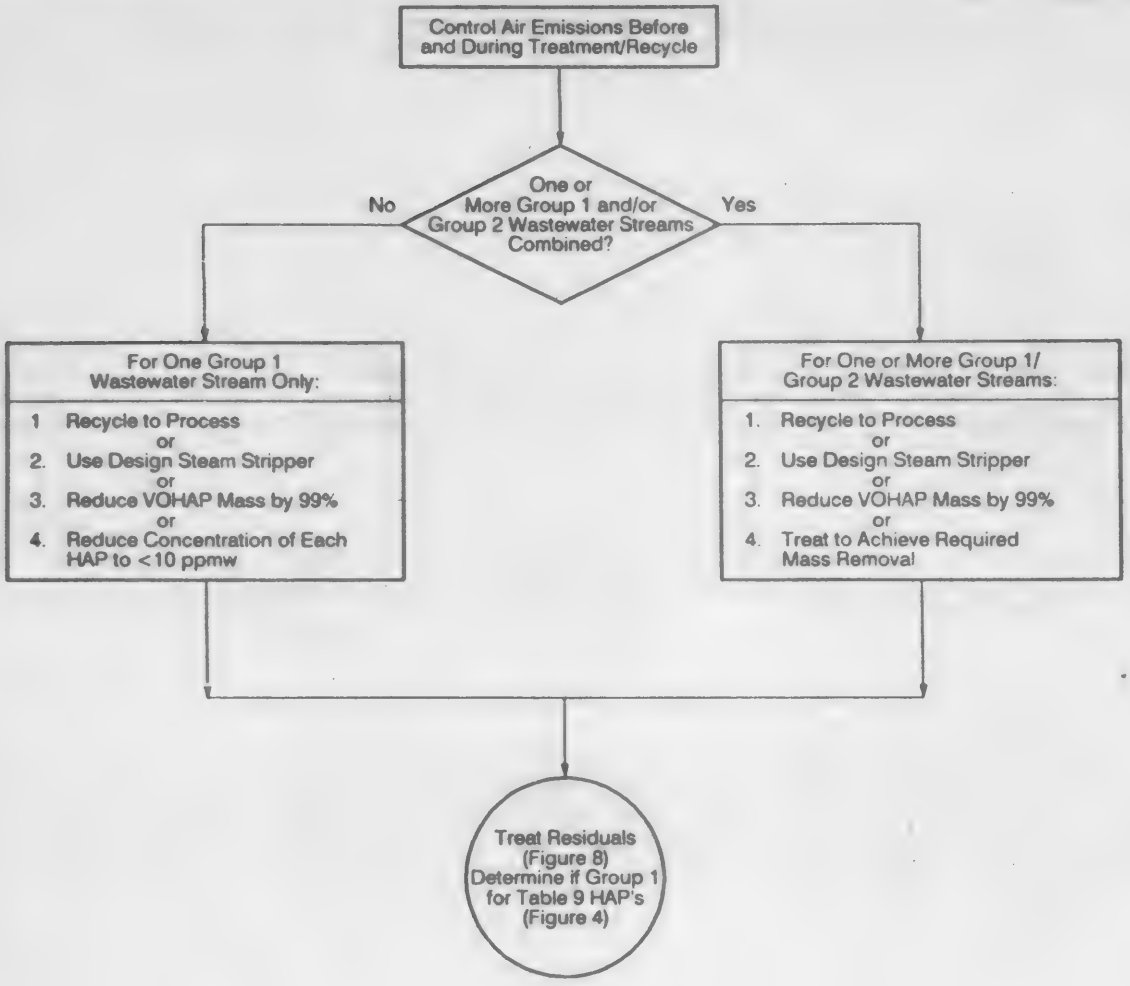
Control Air Emissions Before and During Treatment/Recycle
One or More Group 1 and/or Group 2 Wastewater Streams Combined?
No
Yes
For One Group 1 Wastewater Stream Only:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by 99%
or
4. Reduce Concentration of Each HAP to <10 ppmw
For One or More Group 1/ Group 2 Wastewater Streams:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by 99%
or
4. Treat to Achieve Required Mass Removal
Treat Residuals (Figure 8) Determine if Group 1 for Table 9 HAP's (Figure 4)

Figure 5. Compliance Options for Control of Table 8 HAP's
(Refer to §63.138(b))

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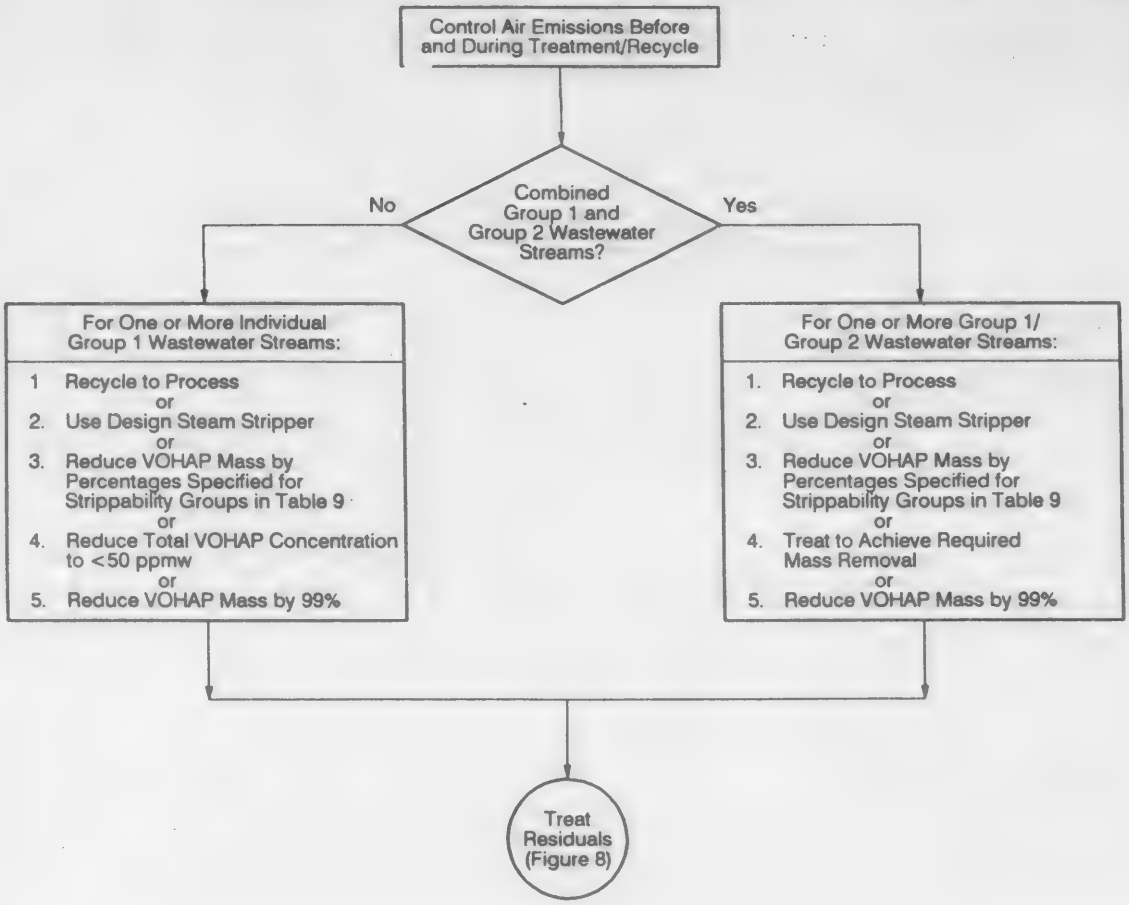
Control Air Emissions Before and During Treatment/Recycle
Combined Group 1 and Group 2 Wastewater Streams?
No
Yes
For One or More Individual Group 1 Wastewater Streams:
1 Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by Percentages Specified for Strippability Groups in Table 9
or
4. Reduce Total VOHAP Concentration to <50 ppmw
or
5. Reduce VOHAP Mass by 99%
For One or More Group 1/ Group 2 Wastewater Streams:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by Percentages Specified for Strippability Groups in Table 9
or
4. Treat to Achieve Required Mass Removal
or
5. Reduce VOHAP Mass by 99%
Treat Residuals (Figure 8)
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Figure 6. Compliance Options for Control of Table 9 HAP's
(Refer to §63.138(c))

For control of Table 9 HAP's only

Non-process wastewater streams and wastewater streams from other process units cannot be combined when using this option

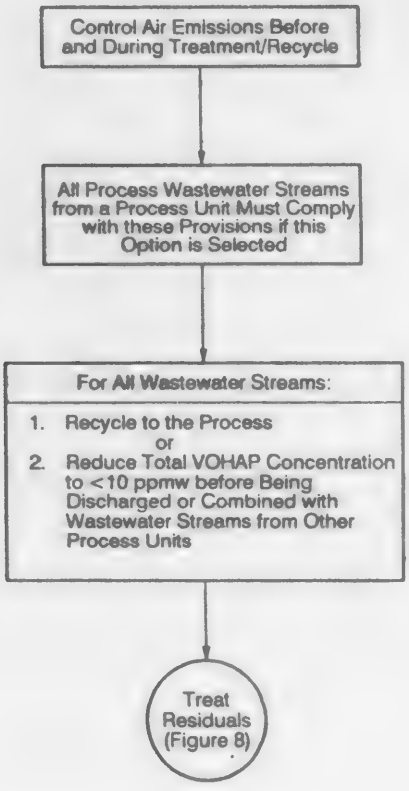
Control Air Emissions Before and During Treatment/Recycle
All Process Wastewater Streams from a Process Unit Must Comply with these Provisions if this Option is Selected
For All Wastewater Streams:
1. Recycle to the Process
or
2. Reduce Total VOHAP Concentration to < 10 ppmw before Being Discharged or Combined with Wastewater Streams from Other Process Units
Treat Residuals (Figure 8)

Figure 7. Process Unit Alternative Compliance Option
(Refer to §63.138(d))

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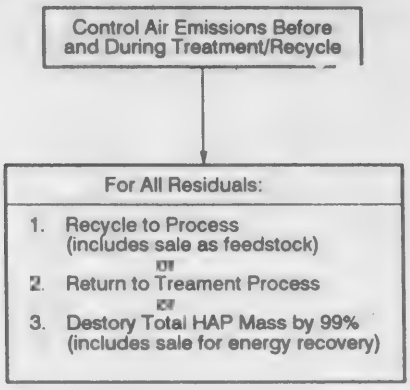
Control Air Emissions Before and During Treatment/Recycle
For All Residuals:
1. Recycle to Process (includes sale as feedstock)
or
2. Return to Treament Process
or
3. Destory Total HAP Mass by 99% (includes sale for energy recovery)

Figure 8. Compliance Options for Control of Residuals (Refer to §63.138(g))

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TABLE 8.—ORGANIC HAP COMPOUNDS SUBJECT TO REQUIREMENTS FOR PROCESS UNITS AT NEW SOURCES

Chemical name	CAS number[a]
Allyl chloride	107051
Benzene	71432
1,3-Butadiene	106990
Carbon disulfide	75150
Carbon tetrachloride	56235
Cumene (isopropyl benzene)	98828
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylidene dichloride (1,1-Dichloroethane)	75343
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Phosgene	75445
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
Trichloroethylene	79016
2,2,4-Trimethylpentane	540841
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
m-Xylene	108383
p-Xylene	106423

[a]CAS numbers refer to the Chemical Abstracts Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 9.—ORGANIC HAP STRIPPABILITY GROUPS AND TARGET REMOVAL EFFICIENCIES

Strippability group	Compound name	Target removal efficiency (percent)
A	See attached list of compounds.	99
B	See attached list of compounds.	95
C	See attached list of compounds.	70

Strippability group	Compound name	CAS number[a]
A	Acetaldehyde	75070
	Allyl chloride	107051
	Benzene	71432
	Benzyl chloride	100447
	Biphenyl	92524
	Bromoform	75252
	1,3-Butadiene	106990
	Carbon disulfide	75150
	Carbon tetrachloride.	56235
	Chlorobenzene	108907
	Chloroform	67663
	Chloroprene (2-Chloro-1,3-Butadiene).	126998
	Cumene (isopropyl benzene).	98828
	1,4-Dichlorobenzene(p).	106467
	1,3-Dichloropropene.	542756
	Ethylbenzene	100414
	Ethyl chloride (Chloro- ethane).	75003
	Ethylene dibromide.	106934
	Ethylene dichloride (1,2-Dichloro- ethane).	107062
	Ethylene oxide	75218
	Ethylidene dichloride (1,1-Dichloro- ethane).	75343
	Hexachloro- benzene.	118741
	Hexachloro- butadiene.	87683
	Hexachloro- ethane.	67721
	Hexane	110543
	Methyl bromide (Bromo- methane).	74839
	Methyl chloride (Chloro- methane).	74873
	Methyl chloroform (1,1,1-Trichloro- ethane).	71556
	Methyl ethyl ketone (2-Butanone).	78933
	Methyl isobutyl ketone (Hexone).	108101
	Methyl tert-butyl ether.	1634044
	Methylene chloride (Dichloromethane).	75092
	Naphthalene	91203
	2-Nitropropane	79469
	Phosgene	75445
	Propylene dichloride (1,2-Dichloro- propane).	78875
	Propylene oxide	75569
	Styrene	100425
	1,1,2,2-Tetrachloroethane.	79345
	Tetrachloro-ethylene (Perchloroethylene).	127184
	Toluene	108883
	1,2,4-Trichlorobenzene.	120821
	1,1,2-Trichloroethane.	79005
	Trichloro- ethylene	79016
	Triethylamine	121448
	2,2,4-Trimethylpentane.	540841
	Vinyl acetate	108054
	Vinyl chloride	75014
	Vinylidene chloride (1,1-Dichloroethylene).	75354
	m-Xylene	108383
	o-Xylene	95476
	p-Xylene	106423
B	Acetonitrile	75058
	Acetophenone	98862
	Acrolein	107028
	Acrylonitrile	107131
	2-Chloroacetophenone.	532274
	Dichloroethyl ether	111444
	N,N-Dimethyl-aniline.	121697
	2,4-Dinitro-phenol	51285
	Ethyl acrylate	140885
	Ethylene glycol dimethyl ether.	110714
	Ethylene glycol mono-butyl ether acetate.	112072
	Isophorone	78591
	Methyl methacrylate.	80626
	Nitrobenzene	98953
	Propionalde-hyde	123386
	2,4,5-Trichlorophenol.	95954
C	Aniline	62533
	o-Cresol	95487
	Diethyl sulfate	64675
	3,3'-Dimethyl-benzidine.	119937
	1,1-Dimethyl- hydrazine.	57147
	Dimethyl sulfate	77781
	2,4-Dinitro-toluene	121142
	1,4-Dioxane (1,4-Di- ethylene-oxide).	123911
	Epichloro-hydrin. (1-Chloro-2,3-epoxy- propane).	106898
	Ethylene glycol mono-methyl ether acetate.	110496
	Diethylene glycol diethyl ether.	112367
	Diethylene glycol dimethyl ether.	111966
	Ethylene glycol mono-ethyl ether acetate.	111159
	Methanol	67561
	o-Toluidine	95534

[a]CAS numbers refer to the Chemical Abstracts Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

* * * * *

§ 63.143 Process wastewater provisions—inspections and monitoring of operations.

(a) For each wastewater tank, surface impoundment, container, individual drain system, and oil-water separator that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall

comply with the inspectionrequirements specified in Table 10 of this subpart.

TABLE 10.—MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS

To comply with	Inspection or monitoring requirement	Frequency	Method
Tanks:			
63.133(b)(1)(ii)	Inspect fixed roof and all openings for leaks[a]	Annually	Method 21[b].
63.133(c)	Inspect floating roof in accordance with §§ 63.120(a)(2) and (a)(3).	See § 63.120(a)(2) and (a)(3)	Visual.
63.133(d)	Measure floating roof seal gaps in accordance with §§ 63.120(b)(2)(i) through (b)(6)(ii).		See § 63.120(b)(2)(ii) through (b)(6)(ii)
	—Primary seal gaps	Once every 5 years.	
	—Secondary seal gaps	Annually.	
63.133(e)	Inspect wastewater tank for failures and improper work practices.	Semi-annually	Visual.
Surface impoundments:			
63.134(b)(1)(ii)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.134(c)	Inspect surface impoundment for failures and improper work practices.	Semi-annually	Visual.
Containers:			
63.135(b)(2)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.135(d)(2)	Inspect enclosure and all openings for leaks[a]	Annually	Method 21[b].
63.135(e)	Inspect container for failures and improper work practices.	Semi-annually	Visual.
Individual drain systems[c]:			
63.136(b)(1)(ii)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.136(b)(3)	Inspect individual drain system for failures and improper work practices.	Semi-annually	Visual.
63.136(c)(1)	Verify flow of water supply to all drains using water seals to ensure appropriate water levels and to prevent other conditions that reduce water seal control effectiveness.	Semi-annually	Visual.
63.136(c)(4)(i)	Inspect all drains using tightly-sealed caps or plugs to ensure caps and plugs are in place and properly installed.		
63.136(c)(4)(ii)	Inspect all junction boxes to ensure covers are in place and have tight seals around edges.	Semi-annually	Visual.
63.136(c)(4)(iii)	Inspect unburied portion of all sewer lines for cracks and gaps.	Semi-annually	Visual.
Oil-water separators:			
63.137(b)(1)(ii)	Inspect fixed roof and all openings for leaks[a]	Annually	Method 21[b]
63.137(c)	Measure floating roof seal gaps in accordance with 40 CFR 60.696(d)(1).		See 40 CFR 60.696(d)(1).
	—Primary seal gaps	Once every 5 years.	
	—Secondary seal gaps	Annually.	
63.137(d)	Inspect oil-water separator for failures and improper work practices.	Semi-annually	Visual.

[a] Leaks are detectable emissions of 500 parts per million by volume above background.
[b] Method 21 of 40 CFR Part 60, Appendix A.
[c] As specified in § 63.136(a), the owner or operator shall comply with the requirements of either § 363.136 (b) or (c).

(b) For each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), or (d) of this subpart, the owner or operator shall comply with the monitoring requirements specified in Table 11 of this subpart.

TABLE 11.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Effluent total VOHAP average concentration: 63.138-(c)(1)(ii)(C) 63.138(d)(2)(i).	A. Measure effluent total VO concentration as a surrogate for VOHAP concentration, or	Monthly	Method 25D
	B. Measure effluent total VOHAP concentration	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]

TABLE 11.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES—Continued

To comply with	Parameters to be monitored	Frequency	Methods
2. Effluent VOHAP concentration of each HAP: 63.138-(b)(1)(ii)(A).	Measure VOHAP concentration of each HAP	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
3. Percentage reduction of total VOHAP mass flow rate: 63.138(c)(1)(ii)(B) 63.138(c)(1)(iii)(B).	A. Measure total VO concentration as a surrogate for VOHAP concentration in influent and effluent, or	Monthly	Method 25D
	B. Measure total VOHAP concentration in influent and effluent	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
4. Percent reduction of VOHAP mass flow rate for each strippability group of HAP's: 63.138(b)(1)(ii)(C) 63.138(b)(1)(iii)(A) 63.138(c)(1)(ii)(D) 63.138-(c)(1)(iii)(C).	A. Measure VOHAP concentration of each strippability group of HAP's in influent and effluent, or	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
	B. Measure concentrations of speciated HAP's in influent and effluent	Monthly	Any applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
5. VOHAP mass removal of HAP's in a treatment process other than a properly operated biological treatment unit 63.138(b)(1)(iii)(C).	A. Measure VOHAP concentration of each HAP in influent and effluent of treatment process or treatment process train, or	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
	B. Measure concentrations of speciated HAP's in influent and effluent of treatment process or treatment process train	Monthly	Any applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
6. VOHAP mass removal of total HAP's in a treatment process other than a properly operated biological treatment unit 63.138(c)(1)(iii)(D).	Measure total VOHAP concentration in influent and effluent of treatment process or treatment process train	Monthly	Proposed Method 305, or any other applicable method which has been validated using Section 5.1 or 5.3 of Method 301[a]
7. VOHAP mass removal of each or total HAP's in a properly operated biological treatment unit 63.138(b)(1)-(iii)(C) 63.138(c)(1)(iii)(D).	Appropriate parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 63.143(c)	Monthly	Method 304, or any other method which has been approved by EPA during compliance demonstrations
8. Alternative to items 1 through 7 above.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 63.143(d)		
9. Design steam stripper 63.138(f)(3), (4), (5), and (6).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder
	Condenser vapor outlet temperature	Continuously	Temperature monitoring device installed at condenser vapor outlet and equipped with a continuous recorder

[a] If method(s) are used to measure organic HAP concentrations in a waste or wastewater stream, rather than measuring VOHAP concentrations in an air stream purged from a waste or wastewater stream, the correction factors listed in Table 13 may be used to adjust the results to provide a measure of the volatile portion (i.e., the VOHAP concentration) of the organic HAP's.

(c) If the owner or operator elects to comply with Item 7 in Table 11 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart.

(d) If the owner or operator elects to comply with Item 8 in Table 11 of this subpart, the owner or operator shall request approval to monitor parameters other than those listed in Items 1 through 7 of Table 11. The request shall be submitted according to the procedures specified in § 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Implementation Plan or permit application.

(e) Except as provided in paragraphs (e)(4) and (e)(5) of this section, for each closed vent system and control device used to comply with the requirements of §§ 63.133 through 63.139 of this subpart, the owner or operator shall comply with the requirements in § 63.139(e), (f), and (h) of this subpart, and with the requirements specified in paragraph (e)(1), (e)(2), or (e)(3) of this section.

(1) The owner or operator shall comply with the monitoring requirements specified in Table 12 of this subpart; or

TABLE 12.—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder[b] *or*.	1. Presence of flow diverted from the control device to the atmosphere *or*.	Continuous
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves.	Monthly
Thermal incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox[a] and equipped with a continuous recorder[b].	Firebox temperature	Continuous
Catalytic incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder[b].	Temperature upstream and downstream of catalyst bed.	Continuous
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder[b].	Presence of a flame at the pilot light.	Continuous
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox[a] and equipped with continuous recorder[b].	Combustion temperature	Continuous
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder[b].	Condenser exit (product side) temperature.	Continuous
Carbon adsorber (regenerative).	Integrating regeneration stream flow monitoring device having an accuracy of ±10 percent and equipped with a continuous recorder[b], *and*.	Total regeneration stream mass flow during carbon bed regeneration cycle(s).	Continuous
	Carbon bed temperature monitoring device equipped with a continuous recorder[b].	Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] and duration of the carbon bed steaming cycle.	Continuous
Carbon adsorber (non-regenerative).	Organic compound concentration monitoring device[c].	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] "Continuous recorder" is defined in § 63.111 of this Subpart.

[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 63.111 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (e)(1) and (e)(2) of this section. The request shall be submitted according to the procedures specified in § 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of

the review of the Implementation Plan or permit application.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 63.139 (e), (f), and (h), but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 63.139 (e), (f), and (h), but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(f) For each parameter monitored in accordance with paragraph (c), (d), or (e) of this section, the owner or operator shall establish a range that indicates proper operation of the treatment process or closed vent system and control device. In order to establish the range, the information required in § 63.152(b)(2) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application in accordance with the requirement specified in §§ 63.146 (b)(6)(ii)(A) and (b)(7)(iii).

(g) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications.

§ 63.144 Process wastewater provisions—test methods and procedures to determine applicability.

(a) An owner or operator shall determine the annual wastewater quantity for a wastewater stream by one of the following methods:

(1) Selecting the highest annual quantity of wastewater managed from historical records representing the most recent 5 years of operation or, if the process unit at the source has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the source;

(2) Using the maximum design capacity of the waste management unit;

(3) Using the maximum wastewater generation rate based on the maximum design production capacity of the process unit generating the wastewater stream; or

(4) Measurements that are representative of maximum wastewater generation rates.

(b) An owner or operator shall determine the total VOHAP average concentration or average VOHAP concentration of each HAP for the point of generation of each wastewater stream by one of the following methods:

(1) Knowledge of the wastewater. The owner or operator shall provide sufficient information to document the total VOHAP average concentration or average VOHAP concentration of each HAP of each wastewater stream. Examples of information that could constitute knowledge include material balances, records of chemicals purchases, process stoichiometry, or previous test results provided the results are still representative of current operating practices at the process unit(s). If test data are used, then the owner or operator shall provide documentation describing the testing protocol and the means by which sampling variability and analytical variability were accounted for in the determination of the total VOHAP average concentration or average VOHAP concentration of each HAP for the wastewater stream.

(2) Bench-scale or pilot-scale test data. The owner or operator shall provide sufficient information to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual total VOHAP average concentration or average VOHAP concentration of each HAP. The owner or operator shall also provide documentation describing the testing protocol, and the means by which sampling variability and analytical variability were accounted for in the determination of total VOHAP average concentration or average VOHAP concentration of each HAP for the wastewater stream.

(3) Measurements made at the point of generation or, when not feasible, measurements made at a downstream location that are corrected to point of generation values of the total VOHAP average concentration or average VOHAP concentration of each HAP in the wastewater stream in accordance with the following procedures:

(i) Collect a minimum of three samples from each wastewater stream which are representative of normal flow and concentration conditions. Where feasible, samples shall be taken from an enclosed pipe prior to the wastewater being exposed to the atmosphere. Wastewater samples shall be collected using the sampling procedures specified in 40 CFR part 60, appendix A, Method 25D.

(ii) When sampling from an enclosed pipe is not feasible, a minimum of three representative samples shall be collected in a manner to minimize exposure of the sample to the atmosphere and loss of HAP compounds prior to sampling.

(iii) Each wastewater sample shall be analyzed using one of the following test methods for determining the total VOHAP average concentration or average VOHAP concentration of each HAP in a wastewater stream:

(A) For total VOHAP average concentration or average VOHAP concentration of each HAP, proposed Method 305 shall be used. The target components shall be stripped from the wastewater samples using the procedures specified in proposed Method 305 (i.e., suspended in a polyethylene glycol/water matrix, heated to 75 °C, purged with 6 liters per minute of gaseous nitrogen, sampled for 30 minutes, etc.). The exiting purge stream containing the target components shall be collected and analyzed using the appropriate techniques described in proposed Method 305. The precision and accuracy requirements of proposed Method 305 must be met as part of the compliance requirements of this rule. Performance audit samples, if available, shall be analyzed using the procedures specified in proposed Method 305.

The following equation shall be used to calculate the VOHAP concentration of an individually-speciated compound in the wastewater from the proposed Method 305 result:

$$C_w = \left(C_c \times \frac{MW}{24.055} \times \frac{P_i}{760} \times \frac{293}{T_i} \times t \times L \times 10^3 \right) / M_s$$

where:

C_w=VOHAP concentration of the individually-speciated HAP compound in the wastewater, parts per million by weight.

C_C=Concentration of compound in the gas stream, as measured by proposed Method 305, parts per million by volume on a dry basis.

M_S=Mass of sample, from proposed Method 305, milligrams.

MW=Molecular weight of the HAP compound, grams per gram-mole.

24.055=Ideal gas molar volume at 293 °Kelvin and 760 millimeters of mercury, liters per gram-mole.

P_i=Barometric pressure at the time of sample analysis, millimeters mercury absolute.

760=Reference or standard pressure, millimeters mercury absolute.

293=Reference or standard temperature, °Kelvin.

T_i=Sample gas temperature at the time of sample analysis, °Kelvin.

t=Actual purge time, from proposed Method 305, minutes.

L=Actual purge rate, from proposed Method 305, liters per minute.

10^3=Conversion factor, milligrams per gram.

Total VOHAP average concentration can be determined by summing the VOHAP concentrations of all HAP compounds in the wastewater.

(B) Method 25D of part 60, appendix A may be used instead of proposed Method 305 to measure total VO average concentration as a surrogate for total VOHAP average concentration;

(C) A test method or results from a test method that measures organic HAP concentrations in the wastewater, and that has been validated according to section 5.1 or 5.3 of Method 301 of appendix A of this part may be used. The specific requirement of proposed Method 305 to collect the sample into polyethylene glycol would not be applicable. The concentrations of the individual organic HAP compounds measured in the water may be corrected to their concentrations had they been measured by proposed Method 305, by multiplying each concentration by the compound-specific fraction measured factor in Table 13 of this subpart.

TABLE 13.—FRACTION MEASURED (F_m) AND FRACTION EMITTED (F_e) FOR HAP COMPOUNDS IN WASTEWATER STREAMS

Chemical Name	F_m	F_e
Acetaldehyde	0.724	0.469
Acetonitrile	0.739	0.354
Acetophenone	0.807	0.302
Acrolein	0.850	0.445
Acrylonitrile	0.875	0.457
Allyl chloride	1.000	0.755
Aniline	0.245	0.194
Benzene	1.000	0.721
Benzyl chloride	1.000	0.534
Biphenyl	1.000	0.550
Bromoform	0.481	0.568
1,3-Butadiene	1.000	0.888
Carbon disulfide	1.000	0.802
Carbon tetrachloride	1.000	0.832
2-Chloroacetophenone	0.841	0.375
Chlorobenzene	1.000	0.696
Chloroform	1.000	0.699
Chloroprene (2-Chloro-1,3-Butadiene)	1.000	0.604
o-Cresol	0.119	0.189
Cumene (isopropyl benzene)	1.000	0.777
1,4-Dichlorobenzene(p)	1.000	0.684
Dichloroethyl ether	0.939	0.358
1,3-Dichloropropene	1.000	0.692
N,N-Dimethylaniline	1.000	0.329
Diethyl sulfate	0.014	0.275
3,3'-Dimethylbenzidine	0.110	0.233
1,1-Dimethylhydrazine	0.486	0.189
Dimethyl sulfate	0.077	0.247
2,4-Dinitrophenol	0.014	0.297
2,4-Dinitrotoluene	0.004	0.231
1,4-Dioxane (1,4-Diethyleneoxide)	0.681	0.268
Epichlorohydrin(1-Chloro-2,3-epoxy propane)	0.859	0.293
Ethyl acrylate	0.788	0.459
Ethylbenzene	1.000	0.744
Ethyl chloride (Chloroethane)	1.000	0.772
Ethylene dibromide	1.000	0.581
Ethylene dichloride (1,2-Dichloroethane)	1.000	0.619
Ethylene oxide	0.712	0.515
Ethylidene dichloride (1,1-Dichloroethane)	1.000	0.722
Diethylene glycol diethyl ether	0.770	0.206
Ethylene glycol monobutyl ether acetate	0.100	0.328
Ethylene glycol dimethyl ether	0.680	0.389
Ethylene glycol monoethyl ether acetate	0.360	0.194
Diethylene glycol dimethyl ether	0.370	0.184
Ethylene glycol monomethyl ether acetate	0.370	0.208
Hexachlorobenzene	1.000	0.637
Hexachlorobutadiene	1.000	0.761
Hexachloroethane	1.000	0.748
Hexane	1.000	1.000
Isophorone	0.997	0.397
Methanol	0.321	0.278
Methyl bromide (Bromomethane)	0.539	0.735
Methyl chloride (Chloromethane)	1.000	0.751
Methyl chloroform (1,1,1-Trichloroethane)	1.000	0.796
Methyl ethyl ketone (2-Butanone)	0.881	0.475
Methyl isobutyl ketone (Hexone)	0.954	0.547
Methyl methacrylate	0.802	0.447
Methyl tert-butyl ether	0.911	0.570
Methylene chloride (Dichloromethane)	1.000	0.680
Naphthalene	1.000	0.561
Nitrobenzene	0.575	0.365
2-Nitropropane	0.537	0.469
Phosgene	0.868	0.945
Propionaldehyde	0.813	0.424
Propylene dichloride (1,2-Dichloropropane)	1.000	0.678
Propylene oxide	0.841	0.541
Styrene	1.000	0.671
1,1,2,2-Tetrachloroethane	1.000	0.518
Tetrachloroethylene (Perchloroethylene)	1.000	0.797
Toluene	1.000	0.731
o-Toluidine	0.267	0.198
1,2,4-Trichlorobenzene	1.000	0.652
1,1,2-Trichloroethane	0.966	0.596
Trichloroethylene	1.000	0.761
2,4,5-Trichlorophenol	0.286	0.298
Triethylamine	0.930	0.473
2,2,4-Trimethylpentane	1.000	1.000
Vinyl acetate	0.748	0.564
Vinyl chloride	1.000	0.823
Vinylidene chloride (1,1-Dichloroethylene)	1.000	0.822
m-Xylene	1.000	0.740
o-Xylene	1.000	0.712
p-Xylene	1.000	0.740

(iv) The total VOHAP average concentration or average VOHAP concentration of each HAP shall be calculated by averaging the results of the sample analyses as follows:

$$\bar{C} = \frac{1}{Q_t} \times \sum_{i=1}^{n} (Q_i)(C_i)$$

where:

$\bar{C}$=Total VOHAP average concentration or average VOHAP concentration of each HAP for wastewater stream, parts per million by weight.

Q_t=Total annual wastewater quantity for wastewater stream, kilograms per year.

n=Number of wastewater samples (at least 3).

Q_i=Annual wastewater quantity for wastewater stream represented by C_i, kilograms per year.

C_i=Measured average concentration (i.e., total VOHAP average concentration or average VOHAP concentration of each HAP) in wastewater sample i, parts per million by weight.

(c) To demonstrate that the total VOHAP mass flow rate from Group 1 wastewater streams in new and existing SOCMI units is less than 1 megagram per year as specified in § 63.138(c)(5) of this subpart, an owner or operator shall determine for the source the total VOHAP mass flow rate from all Group 1 wastewater streams identified in § 63.132(f)(1) of this subpart at their points of generation by the following procedure:

(1) Determine the annual wastewater quantity for each wastewater stream using the procedures specified in paragraph (a) of this section.

(2) Determine the total VOHAP average concentration for each wastewater stream using the procedures specified in paragraph (b) of this section.

(3) Calculate the annual total VOHAP mass flow rate in each wastewater stream by multiplying the annual average flow rate of the wastewater stream times the total VOHAP average concentration.

(4) Calculate the total source VOHAP mass flow rate from all Group 1 wastewater streams by adding together the annual total VOHAP mass flow rate from each Group 1 wastewater stream.

(d) An owner or operator electing to reduce the total source VOHAP mass flow rate to less than 1 megagram per year in accordance with § 63.138(c)(6) of this subpart shall determine the total source VOHAP mass flow rate from Group 1 wastewater streams identified in § 63.138(f)(1) of this subpart by the following procedures:

(1) The annual total VOHAP mass flow rate of each Group 1 wastewater stream treated to the level of the provisions of 63.138(c) of this subpart shall not be included in the total source VOHAP mass flow rate calculation.

(2) For each untreated Group 1 wastewater stream, annual total VOHAP mass flow rate shall be determined by the procedures in paragraph (c) of this section.

(3) For each Group 1 wastewater stream treated to levels less than required by the provisions of § 63.138(c) of this subpart, the annual total VOHAP mass flow rate shall be determined as follows:

(i) Measurement or sampling shall occur at the point of discharge of the treatment process or series of treatment processes. The point of discharge is defined as the point where the treated wastewater exits the treatment process but before it is mixed with other wastewater streams, and prior to exposure to the atmosphere.

(ii) Determine the annual wastewater quantity for each wastewater stream at the point of discharge of the treatment process or series of treatment processes using the procedures specified in paragraph (a) of this section.

(iii) Determine the total VOHAP average concentration for each wastewater stream at the point of discharge using the procedures specified in paragraph (b) of this section.

(iv) Calculate the annual total VOHAP quantity in each wastewater stream by multiplying the annual wastewater quantity of the wastewater stream times the total VOHAP average concentration.

(4) The total source VOHAP mass flow rate shall be calculated by summing the annual total VOHAP quantity from all wastewater streams as determined in paragraphs (d)(2) and (d)(3) of this section.

(e) To determine the annual average wastewater flow rate for a wastewater stream, one of the following methods shall be used:

(1) Use the maximum production capacity of the process unit, knowledge of the process, and mass balance information to either: estimate directly the average wastewater flow rate; or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year;

(2) Select the highest average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit;

(3) Measure the flow rate of the wastewater for the point of generation during conditions that are representative of average wastewater generation rates.

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

(a) This paragraph applies to the use of all performance tests to demonstrate compliance of a treatment process or waste management unit.

(1) The test shall be conducted when the treatment process or waste management unit is operating at a representative inlet wastewater stream flow rate and VOHAP concentration under which it would be most difficult to demonstrate compliance.

(2) Operations during periods of startup, shutdown, or malfunction shall not constitute representative conditions for the purpose of a test.

(3) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(4) The owner or operator shall record all process information as is necessary to document operating conditions during the test.

(b) This paragraph applies to the use of performance tests to demonstrate compliance of a treatment process with the parts per million by weight wastewater stream concentration limits at the outlet of the treatment process.

(1) The total VOHAP average concentration shall be measured for compliance with the concentration alternatives specified in § 63.138(c)(1)(ii)(C) and (d)(1)(i) of this subpart; or the average concentration of each VOHAP shall be measured for compliance with the concentration alternatives specified in § 63.138(b)(1)(ii)(A) of this subpart.

(2) A minimum of three representative samples of the wastewater stream exiting the treatment process shall be collected and analyzed using the procedures in § 63.144(b)(3) of this subpart.

(c) This paragraph applies to the use of performance tests to demonstrate compliance of a noncombustion treatment process with the percent reduction limits for total VOHAP mass flow rate or VOHAP mass flow rate for strippability groups of HAP's.

(1) The percent reduction of total VOHAP mass flow rate shall be measured for compliance with § 63.138(c)(1)(ii)(B) or (c)(1)(iii)(B) of this subpart; or of VOHAP mass flow rate for strippability groups of HAP's for compliance with § 63.138(b)(1)(ii)(C), (b)(1)(iii)(A), (c)(1)(ii)(D), or (c)(1)(iii)(C) of this subpart.

(2) The same test method shall be used to analyze the wastewater samples from both the inlet and outlet of the treatment process.

(3) The mass flow rate of total VOHAP or of VOHAP for a strippability group of HAP's entering the treatment process (E_b) and exiting the treatment process (E_a) shall be determined by computing the product of the flow rate of the wastewater stream entering or exiting the treatment process, and the total VOHAP or strippability group VOHAP average concentration of the entering or exiting wastewater streams, respectively.

(i) The flow rate of the entering and exiting wastewater streams shall be determined using the inlet and outlet flow meters, respectively.

(ii) The total VOHAP or strippability group VOHAP average concentrations of the entering and exiting wastewater streams shall be determined using the method specified in § 63.144(b)(3)(iii) of this subpart.

(iii) Three grab samples of the entering wastewater stream shall be taken at equally spaced time intervals

over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(iv) Three grab samples of the exiting wastewater stream shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over the same 3-hour period at which the mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process is determined.

(v) The mass flow rates of total VOHAP or strippability group VOHAP entering and exiting the treatment process are calculated as follows:

$$E_b = \frac{K}{n \times 10^6}\left(\sum_{i=1}^{n} V_{bi} C_{bi}\right)$$

$$E_a = \frac{K}{n \times 10^6}\left(\sum_{i=1}^{n} V_{ai} C_{ai}\right)$$

where:

E_b=Mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process, kilograms per hour.

E_a=Mass flow rate of total VOHAP or strippability group VOHAP exiting the treatment process, kilograms per hour.

K=Density of the wastewater stream, kilograms per cubic meter.

V_{bi}=Average volumetric flow rate of wastewater entering the treatment process during each run i, cubic meters per hour.

V_{ai}=Average volumetric flow rate of wastewater exiting the treatment process during each run i, cubic meters per hour.

C_{bi}=Average concentration of total VOHAP or strippability group VOHAP in the wastewater stream entering the treatment process during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream, or of all HAP's in the target strippability group that are in the stream.

C_{ai}=Average concentration of total VOHAP or strippability group VOHAP in the wastewater stream exiting the treatment process during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream or of all HAP's in the target strippability group that are in the stream.

n=Number of runs.

(4) The percent reduction across the treatment process shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R=Control efficiency of the treatment process, percent.

E_b=Mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process, kilograms per hour.

E_a=Mass flow rate of total VOHAP or strippability group VOHAP exiting the treatment process, kilograms per hour.

(d) This paragraph applies to the use of a performance test to demonstrate compliance of a combustion treatment process with the percent reduction limits for total VOHAP mass flow rate or VOHAP mass flow rate for strippability groups of HAP's. The percent reduction of total VOHAP mass flow rate shall be measured for compliance with § 63.138(c)(1)(ii)(B) or (c)(1)(iii)(B) of this subpart; or of VOHAP mass flow rate for strippability groups of HAP's for compliance with § 63.138(b)(1)(ii)(C), (b)(1)(iii)(A), (c)(1)(ii)(D), or (c)(1)(iii)(C) of this subpart.

(1) The mass flow rate of total VOHAP or of VOHAP for a strippability group of HAP's entering the combustion unit shall be determined by computing the product of the average flow rate of the wastewater stream entering the combustion unit, as determined by the inlet flow meter, and the total VOHAP or group VOHAP average concentration of the waste stream, as determined using the sampling procedures in § 63.144(b)(3) of this subpart.

(2) Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over at least a 3-hour period.

(3) If grab sampling techniques are used, then these grab samples shall be taken at a minimum of three equally spaced time intervals during the run.

(4) The mass flow rate of total VOHAP or strippability group VOHAP into the combustion unit is calculated as follows:

$$E_b = \frac{K}{n \times 10^6}\left(\sum_{i=1}^{n} V_i C_i\right)$$

where:

E_b=Mass flow rate of total VOHAP or strippability group VOHAP into the combustion unit, kilograms per hour.

K=Density of the waste stream, kilograms per cubic meter.

V_i=Average volumetric flow rate of waste entering the combustion unit during each run i, cubic meters per hour.

C_i=Average concentration of total VOHAP or strippability group VOHAP in the waste stream entering the combustion unit during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream, or of all HAP's in the target strippability group that are in the stream.

n=Number of runs.

(5) The mass flow rate of total VOHAP or strippability group VOHAP exiting the combustion unit exhaust stack shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least three 1-hour runs are conducted and be the same time period at which the mass flow rate of VOHAP entering the treatment process is determined. Each run shall represent a time-integrated composite sample corresponding to the periods when the waste feed is sampled.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate.

(B) The total VOHAP or strippability group VOHAP average concentration in the exhaust downstream of the combustion unit shall be determined using Method 18 of appendix A of 40 CFR part 60. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part.

(iii) The mass of total VOHAP or strippability group VOHAP emitted during each run shall be calculated as follows:

$$M_i = \frac{V}{10^6}\sum_{j=1}^{m} 0.0416\, MW_j C_j$$

where:

M_i=Mass of total VOHAP or strippability group VOHAP emitted during run i, kilograms.

V=Volume of air-vapor mixture exhausted at standard conditions, cubic meters.

$6C_j$=VOHAP concentration of compound j measured in the exhaust, parts per million by volume.

MW_j=Molecular weight of compound j in exhaust stream, kilograms per kilogram-mole.

m=Number of HAP compounds in total or in strippability group.

0.0416=Conversion factor for molar volume, kilogram-mole per cubic meter at 293 °Kelvin and 760 millimeters mercury absolute.

(iv) The total VOHAP or strippability group VOHAP mass emission rate in the exhaust shall be calculated as follows:

$$E_a = \left(\sum_{i=1}^{n} M_i\right) / T$$

where:

E_a=Mass flow rate of total or strippability group VOHAP emitted, kilograms per hour.

M_i=Mass of total or strippability group VOHAP emitted during run i, kilograms.

T=Total time of all runs, hours.

n=Number of runs.

(6) The total VOHAP or strippability group VOHAP destruction efficiency for the combustion unit shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R = Total or strippability group VOHAP destruction efficiency for the combustion unit, percent.

E_b = Mass flow rate of total or strippability group VOHAP entering the combustion unit, kilograms per hour.

E_a = Mass flow rate of total or strippability group VOHAP exiting the combustion unit, kilograms per hour.

(e) An owner or operator shall test equipment for emissions of 500 parts per million by volume or greater required in §§ 63.133 through 63.137 and 63.139 of this subpart in accordance with the following requirements:

(1) Monitoring shall comply with Method 21 from Appendix A of 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 parts per million by volume of hydrocarbon in air); and

(ii) A mixture of methane and air at a concentration of approximately, but less than, 500 parts per million by volume methane.

(iii) The instrument may be calibrated at a higher methane concentration up to 2,000 parts per million by volume higher than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. The instrument may not be calibrated at a methane concentration lower than the leak definition concentration for a specific piece of equipment.

(5) The background level shall be determined as set forth in Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close as possible to the interface as described in Method 21.

(7) The instrument response factors shall be considered according to paragraphs (e)(7)(i) and (e)(7)(ii) of this section.

(i) The response factors used shall be the instrument response factor determined for the predominant HAP (i.e., the HAP present at the highest percentage) at 500 parts per million by volume. The response factors may be obtained from the available literature, the instrument manufacturer, or determined for the specific instrument and HAP.

(ii) Chemical composition of individual process streams may be determined by sampling, engineering calculations, or process knowledge. A separate determination for each stream is not necessary if all or portions of the process unit can be shown to exhibit similar composition. The basis for all process stream composition determinations shall be documented as required in § 63.144(b) of this subpart.

(8) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared to 500 parts per million by volume for determining compliance.

(f) A performance test to demonstrate compliance of a vent stream control device with the organic compound reduction efficiency requirement specified under § 63.139(b) of this subpart shall use the following procedures:

(1) Sampling sites shall be selected using Method 1 or 1A from appendix A of 40 CFR part 60, as appropriate.

(2) The mass flow rate of organics entering and exiting the control device shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least three runs are conducted.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate;

(B) The organic concentration in the vent stream entering and exiting the control device shall be determined using Method 18 from appendix A of 40 CFR part 60. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(iii) The mass flow rate of organics entering and exiting the control device during each run shall be calculated as follows:

$$E_a = \frac{0.0416}{10^6 \times m}\left[\sum_{j=1}^{m} V_{aj}\left(\sum_{i=1}^{n} C_{aij} MW_i\right)\right]$$

$$E_b = \frac{0.0416}{10^6 \times m}\left[\sum_{j=1}^{m} V_{bj}\left(\sum_{i=1}^{n} C_{bij} MW_i\right)\right]$$

where:

E_a=Mass flow rate of organics exiting the control device, kilograms per hour.

E_b=Mass flow rate of organics entering the control device, kilograms per hour.

V_{aj}=Average volumetric flow rate of vent stream exiting the control device during run j at standards conditions, cubic meters per hour.

V_{bj}=Average volumetric flow rate of vent stream entering the control device during run j at standards conditions, cubic meters per hour.

m=Number of runs.

C_{aij}=Organic concentration of compound i measured in the vent stream exiting the control device during run j as determined by Method 18, parts per million by volume on a dry basis.

C_{bij}=Organic concentration of compound i measured in the vent stream entering the control device during run j as determined by Method 18, parts per million by volume on a dry basis.

MW_i=Molecular weight of organic compound i in the vent stream, kilograms per kilogram-mole.

n=Number of organic compounds in the vent stream.

0.0416=Conversion factor for molar volume, kilograms-mole per cubic meter at 293 °Kelvin and 760 millimeters mercury absolute.

(4) The organic reduction efficiency for the control device shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R=Total organic reduction efficiency for the control device, percent.

E_b=Mass flow rate of organics entering the control device, kilograms per hour.

E_a=Mass flow rate of organics exiting the control device, kilograms per hour.

(g) A performance test to demonstrate compliance with the mass removal provision for new SOCMI process units in § 63.138(b)(1)(iii)(C) of this subpart shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (i) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \left(\frac{K}{10^6} V \sum_{j=1}^{n} \overline{C_j}\right) 0.99$$

where:

RMR=Required mass removal of VOHAP from Table 8 HAP compounds in a Group 1 wastewater stream, in kilograms per year.

K=Density of the Group 1 wastewater stream, kilograms per cubic meter.

V=Annual wastewater quantity of the Group 1 wastewater stream, cubic meters per year.

n=Number of Table 8 HAP compounds in stream.

$\overline{C_j}$=Average VOHAP concentration of each Table 8 organic HAP compound "j" in the Group 1 wastewater stream at the point of generation, parts per million by weight.

0.99=Required removal fraction of VOHAP from Table 8 compounds.

(1) The annual wastewater quantity for each Group 1 wastewater stream to be combined for treatment (V), shall be determined using the procedures specified in paragraph (a) of this section.

(2) The VOHAP average concentration of each Table 8 HAP compound ($\overline{C_j}$) in each Group 1 wastewater stream to be combined for treatment shall be determined using the procedures specified in § 63.144(b)(3) of this subpart.

(3) The total required mass removal is calculated by adding together the required mass removal for each individual Group 1 stream to be combined for treatment.

(h) A performance test to demonstrate compliance with the mass removal provisions for new and existing SOCMI process units in § 63.138(c)(1)(iii)(D) of this subpart shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (i) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \frac{K}{10^6} V \sum_{j=1}^{n} \left(\overline{C_j} * \frac{F}{100} \right)$$

where:

RMR=Required mass removal of total VOHAP average concentration in the Group 1 wastewater stream, prior to combination with other Group 1 wastewater streams, kilograms per year.

K=Density of the Group 1 wastewater stream, kilograms per cubic meter.

V=Average wastewater flow rate for the Group 1 wastewater stream, cubic meters per year.

n=Number of organic HAP compounds in stream.

$\overline{C_j}$=Average VOHAP concentration of compound "j" in the Group 1 wastewater stream at the point of generation, parts per million by weight.

F=Required percent removal of each compound "j" (target removal efficiency from Table 9).

(1) The average wastewater flow rate for each Group 1 wastewater stream to be combined for treatment (V), shall be determined using the procedures specified in § 63.144(e) of this subpart.

(2) The average of each VOHAP concentration ($\overline{C_j}$) in each Group 1 wastewater stream to be combined for treatment shall be determined using the procedures specified in § 63.144(b)(3) of this subpart.

(3) The total required mass removal is calculated by adding together the required mass removal for each individual Group 1 wastewater stream to be combined for treatment.

(i) For a performance test to demonstrate compliance of a treatment process with the mass removal standards, the actual mass removal of total VOHAP [for compliance with § 63.138(c)(1)(iii)(D) of this subpart] or of VOHAP from table 8 compounds [for compliance with § 63.138(b)(1)(iii)(C) of this subpart] in the wastewater stream shall be determined by the following procedure:

(1) The actual mass removal of a treatment process, or series of treatment processes other than a properly operated biological treatment unit shall be determined using the following equation:

$$MR=(E_b-E_e)$$

where:

MR=Actual mass removal by the treatment process or series of treatment processes of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds, kilograms per hour.

E_b=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process or series of treatment processes, kilograms per hour.

E_e=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process or series of treatment processes, kilograms per hour.

(i) The mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process (E_b) shall be determined using the procedures specified in paragraph (c)(3) of this section.

(ii) The mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process (E_e) shall be determined using the procedures specified in paragraph (c)(3) of this section.

(2) The actual mass removal (MR) of a treatment process which is a properly operated biological treatment unit is equal to the mass removed due to biological destruction. The mass removal should be determined using the following equation:

$$MR=(E_b-E_e)*F_{bio}$$

where:

MR=Actual mass removal by the treatment process or series of treatment processes of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds, kilograms per hour.

E_b=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process or series of treatment processes, kilograms per hour.

E_e=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process or series of treatment processes, kilograms per hour.

F_{bio}=The fraction of VOHAP from Table 8 HAP compounds, or total VOHAP for Table 9 HAP compounds, biodegraded in a properly operated biological treatment unit. This fraction shall be determined using WATER7. The site specific biorate constants used as inputs to WATER7 shall be determined using Method 304 of appendix A of this part.

(3) Compliance with the mass removal provisions in § 63.138(b)(1)(iii)(C) or § 63.138(c)(1)(iii)(D) of this subpart is achieved when the actual mass removal of the treatment process (MR) is demonstrated to meet or exceed the total required mass removal (RMR), determined using the procedures specified in paragraphs (g) or (h) of this section, respectively.

* * * * *

§ 63.150 Emissions averaging provisions.

(a) This section applies to owners or operators who seek to comply with emission limits by using emissions averaging according to § 62.112(c)(2) of this subpart rather than following the provisions of §§ 63.113 through 63.149 of this subpart for all emission points.

(b) Unless an operating permit application has been submitted, the owner or operator shall develop, and submit for approval, an Implementation Plan containing all of the information required in § 63.151(d) of this subpart for all points to be included in an emission average. The Implementation Plan or operating permit application shall identify all emission points to be included in the emissions averaging. This must include any Group 1 emission points to which the reference control technology (defined in § 63.111 of this subpart) is not applied and all other emission points being controlled as part of the average.

(c) The following emission points can be credited in an emissions average to offset use of controls less stringent than the reference technology on Group 1 emission points, if sufficient information is available to determine the appropriate value of credits for the point:

(1) A Group 2 emission point to which a new control has been applied after November 15, 1990.

(2) A Group 1 emission point that is controlled by a technology that the Director of the EPA Office of Air Quality Planning and Standards or the operating permit authority agrees has a higher nominal control efficiency than the reference technology if the emission point was not controlled to this level on or before November 15, 1990. Information on the nominal control efficiencies for such technologies must be submitted and approved as provided in paragraph (h) of this section.

(3) Emission points from which emissions are reduced by pollution prevention projects initiated after 1987. For Group 1 emission points, in order to be credited, the pollution prevention projects must result in emission levels lower than what would have occurred if the reference technology had been applied to the emission points at their emission levels prior to pollution

prevention. Pollution prevention is defined in paragraph (i) of this section.

(4) Any Group 2 emission point to which controls were applied as part of the early reduction program established by the EPA under section 112(i)(5) of the Clean Air Act as amended in 1990 (56 FR 27338).

(5) A Group 1 emission point controlled by a technology EPA agrees has a higher nominal control efficiency than the reference technology if this control was applied as part of the early reduction program established by the EPA under section 112(i)(5) of the Clean Air Act as amended in 1990 (56 FR 27338).

(6) Any Group 2 emissions point to which controls were applied as part of a commitment under the Agency's 33/50 program described in EPA Publication Number EPA–741–K–92–001.

(7) Any Group 1 emissions point controlled by a technology EPA agrees has a higher nominal control efficiency than the reference control technology if the control was applied as part of a commitment under the Agency's 33/50 program described in EPA Publication Number EPA–741–K–92–001.

(d) The following emission points cannot be used to generate credits in emission averaging:

(1) Emission points already controlled on or before November 15, 1990, except those that were controlled as part of the Section 112(i)(5) early reduction program, the 33/50 program, or a pollution prevention program as described in paragraph (c) of this section.

(2) Emission points achieving control levels higher than the nominal efficiency of a reference technology when using a reference control technology, unless the requirements of § 63.150(h)(6) of this subpart have been satisfied for process vents, or the requirements in § 63.150(g)(3)(ii)(C) or (g)(3)(iii)(D) have been satisfied for storage vessels. For example, it is not allowable to claim that an internal floating roof meeting the specifications of § 63.119(b) of this Subpart applied to a storage vessel is achieving greater than 95 percent control.

(3) Production cutbacks and shutdowns. The emission credits are calculated at the actual monthly production level and do not include any process units that are shut down.

(e) For all points included in an emission average, the owner or operator shall:

(1) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the reference technology level for those emission points. Equations in paragraph (f) of this section shall be used to calculate debits.

(2) Calculate and record monthly credits for all Group 1 or Group 2 emission points that are overcontrolled to compensate for the debits using equations in paragraph (g) of this section. Emission points that meet the criteria of paragraph (c) of this section may be included in the credit calculation, whereas those described in paragraph (d) of this section shall not be included.

(3) Demonstrate that annual credits calculated according to paragraph (g) of this section are greater than or equal to debits calculated for the same annual compliance period according to paragraph (f) of this section. If the credits are not greater than or equal to the debits for the same annual compliance period, and the owner or operator has met the requirements in paragraphs (e)(3)(i) through (e)(3)(iv) of this section, the owner or operator may use banked credits and credits from the relevant compliance period to offset the debits. If banked credits are available and necessary, compliance shall be judged based on the sum of banked credits and credits from the relevant compliance period, averaged with debits from the relevant compliance period.

(i) If the credits calculated according to paragraph (g) of this section are greater than the debits calculated for the same annual compliance period according to paragraph (f) of this section, the owner or operator may bank the extra credits for use in future compliance periods.

(A) In order to bank credits for use in future compliance periods, the owner or operator must report the data used to calculate that the extra credits were generated and certify the accuracy of that data in the Periodic Reports as specified in § 63.152(c) of this Subpart. These records must be readily accessible for 5 years after the period in which the credit is available for use as specified in paragraph (e)(3)(iv) of this section.

(B) The owner or operator may choose to include more than the required number of credit generating emission points in an average in order to increase the likelihood of creating bankable credits. However, these additional points are not required to create bankable credits.

(ii) Banked credits can only be used to comply with the annual requirement specified in paragraph (e)(3) of this section. Banked credits cannot be used for the quarterly requirement specified in paragraph (e)(4) of this section.

(iii) In the Implementation Plan for emissions averaging as specified in § 63.151(c) and (d) of this subpart or the operating permit application as specified in § 63.152(e) of this subpart, the credit generating emission points must be capable of generating sufficient credits to offset the debits from the debit generating emission points under representative operating conditions. The owner or operator shall not develop an Implementation Plan or operating permit application for emissions averaging that relies on banked credits to ensure that credits will exceed debits. If such an averaging plan is submitted, it will not be approved.

(iv) The length of time that banked credits shall be available for use after the year in which the extra credit was generated is (a range of 2 to 5 years is being proposed; a single number will be selected at promulgation). If a banked credit is not used within (2 to 5) years of the year in which it was generated, it is no longer available for use.

(4) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (f) of this section are not more than (a range of 1.25 to 1.35 is being proposed; a single number will be selected at promulgation) times the credits for the same period calculated according to paragraph (g) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with (25 to 35) percent more debits than credits allowed on a quarterly basis.

(5) Calculation of monthly credits and debits shall not include periods of startup, shutdown, and malfunction as described in the source's startup, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A of this part.[16]

(6) The quarterly and annual credits and debits shall be recorded and reported in the Periodic Reports as specified in § 63.152(c) of this subpart. The Periodic Reports shall include a certification of compliance with the emissions averaging provisions.

(f) Debits shall be calculated as follows:

(1) The overall equation for calculating source-wide debits is:

[16] The EPA will propose subpart A in the future.

$$\text{Debits} = \sum_{i=1}^{n} (EPV_{iACTUAL} - (0.02)EPV_{iu}) + \sum_{i=1}^{n} (ES_{iACTUAL} - (0.05)ES_{iu})$$

$$+ \sum_{i=1}^{n} (ETR_{iACTUAL} - (0.02)ETR_{iu}) + \sum_{i=1}^{n} (EWW_{iACTUAL} - EWW_{ic})$$

where:

Debits and all terms of the equation are in units of megagrams per month, and

$EPV_{iACTUAL}$=Emissions from each Group 1 process vent (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(2) of this section.

$(0.02)EPV_{iu}$=Emissions from each Group 1 vent (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(2) of this section.

$ES_{iACTUAL}$=Emissions from each Group 1 storage vessel (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(3) of this section.

$(0.05)ES_{iu}$=Emissions from each Group 1 storage vessel (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(3) of this section.

$ETR_{iACTUAL}$=Emissions from each Group 1 transfer rack (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(4) of this section.

$(0.02)ETR_{iu}$=Emissions from each Group 1 transfer rack (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(4) of this section.

$EWW_{iACTUAL}$=Emissions from each Group 1 wastewater stream (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(5) of this section.

EWW_{ic}=Emissions from each Group 1 wastewater stream (i) if the reference control technology had been applied to the uncontrolled emissions. This is calculated according to paragraph (f)(5) of this section.

n=The number of emission points being included in the emissions average. The value of n is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

(2) Emissions from process vents shall be calculated as follows:

(i) For purposes of determining process vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be after the final product recovery device, if any recovery devices are present, before any combustion device, and before discharge to the atmosphere. Method 1 or 1A shall be used for selection of the sampling site.

(ii) The following equation shall be used for each process vent (i) to calculate EPV_{iu}:

$$EPV_{iu} = \frac{(7.31 \times 10^{-7}) Qh \left(\sum_{j=1}^{n} C_j M_j \right)}{T + 273}$$

where:

EPV_{iu}=Uncontrolled process vent emission rate from process vent (i) in megagrams per month.

Q=Vent stream flow rate (dry standard cubic meters per minute) measured using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present in the vent.

C_j=Concentration (parts per million by volume, dry basis) of organic HAP compound j as measured by Method 18.

M_j=Molecular weight of organic HAP compound j (gram/gram-mole).

T=Vent stream discharge temperature, in °C.

n=Number of organic HAP compounds.

(A) The values of Q, C_j, M_j, and T shall be determined during an initial performance test conducted under representative operating conditions. Monthly testing is not required.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q, C_j, M_j, or T are no longer representative, a new performance test shall be conducted.

(iii) The following procedures and equations shall be used to calculate $EPV_{iACTUAL}$:

(A) If the vent is not controlled by a control device or pollution prevention measure $EPV_{iACTUAL}=EPV_{iu}$, where EPV_{iu} is calculated according to the procedures in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(B) If the vent is controlled using a control device or a pollution prevention measure achieving less than the 98-percent reduction level associated with the reference control technology,

$$EPV_{iACTUAL} = EPV_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%} \right)$$

(1) Percent reduction shall be initially measured according to the procedures in § 63.116 of this subpart if a combustion device is used. If a non-combustion control device is used, percent reduction shall be demonstrated by an initial performance test at the inlet and outlet of the control device or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(2) For process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $EPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3) of this subpart, a Group 1 process vent may add sufficient product recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 process vent.

(3) Procedures for calculating the percent reduction of pollution prevention measures are specified in paragraph (i) of this section.

(3) Emissions from storage vessels shall be calculated as follows:

(i) The following equation shall be used for each storage vessel (i) to calculate ES_{iu}:

$$ES_{iu} = \frac{L_B + L_W}{12}$$

where:

ES_{iu}=Uncontrolled emissions from a fixed roof vessel having identical dimensions and vessel color as vessel i, in megagrams per month.

L_B=Breathing loss emissions in megagrams per year calculated according to paragraph (f)(3)(i)(A) of this section.

L_W=Working loss emissions in megagrams per year calculated according to paragraph (f)(3)(i)(B) of this section.

(A) Breathing loss emissions shall be calculated using the following equation:

$$L_B = 1.02 \times 10^{-5} M_V \left(\frac{P}{P_A - P} \right)^{0.68} D^{1.73} H^{0.51} \Delta T^{0.50} F_P C K_C$$

where:

L_B=Breathing loss emissions (megagrams per year).

M_v=Molecular weight of vapor in storage vessel (pound/pound mole).

P_A=Average atmospheric pressure (pounds per square inch absolute).

P=True vapor pressure of the HAP at liquid storage temperature (pounds per square inch absolute). See Table 20 of this subpart.

D=Tank diameter (feet).

H=Average vapor space height (feet). Use vessel-specific values or an assumed value of one-half the height.

ΔT=Average ambient diurnal temperature change (°F). A typical value of 20 °F may be used.

F_P=Paint factor (dimensionless) from Table 21.

C=Adjustment factor for small diameter tanks (dimensionless); use C=1 for diameter ≥30 feet; use $C=0.0771D-0.0013D^2-0.1334$ for diameter <30 feet.

K_C=Product factor (dimensionless). Use 1.0 for volatile organic HAP's.

(B) Working losses shall be calculated using the following equation:

$L_W=1.089\times10^{-8} M_v(P)\ (V)\ (N)\ (K_N)\ (K_C)$

where:

V=Tank capacity (gallon).

N=Number of turnovers per year.

K_N=Turnover factor (dimensionless).

$$K_N = \frac{180+N}{6N} \quad \text{for turnovers} > 36$$

K_N=1 for turnovers ≤36.

M_v, P, and K_C as defined in paragraph (A) above.

(ii) The following equations shall be used for each fixed roof storage vessel (i) to calculate in $ES_{iACTUAL}$, in megagrams per month:

(A) If the vessel is not controlled with an internal floating roof, an external floating roof, a closed vent system and control device, or another control technique, $ES_{iACTUAL}=ES_{iu}$, where ES_{iu} is calculated according to the procedures in paragraph (f)(3)(i) of this section.

(B) If the vessel is controlled using a control device or pollution prevention measure achieving less than the 95 percent reduction level associated with the reference control technology,

$$ES_{iACTUAL}=ES_{iu} * \left(\frac{1-\text{Percent reduction}}{100} \right)$$

(C) If the vessel is controlled with an internal or external floating roof that does not meet the specifications of § 63.119 (b), (c), or (d) of this subpart, $ES_{iACTUAL}$ shall be calculated as specified in paragraph (f)(3)(iii) or (f)(3)(iv) of this section.

(iii) The following equation shall be used for each internal floating roof vessel (i) that does not meet the

specifications of § 63.119(b) or (d) of this Subpart to calculate $ES_{IACTUAL}$ in megagrams per month:

$$ES_{IACTUAL} = \frac{L_W + L_R + L_F + L_D}{12}$$

where:

L_W=Withdrawal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(A) of this section.
L_R=Rim seal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(B) of this section.
L_F=Fitting loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(C) of this section.
L_D=Deck seam loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(D) of this section.

(A) Withdrawal loss emissions shall be calculated using the following equation:

$$L_W = \frac{1.018 \times 10^{-5} Q C W_L}{D}\left[1 + \left(\frac{N_c F_c}{D}\right)\right]$$

where:

Q=Throughput (gallon per year); (gallon/turnover) * (turnovers per year).
C=Shell clingage factor (barrel/1,000 feet^2), see Table 22 of this Subpart.
W_L=Average liquid density (pound/gallon).
D=Tank diameter (feet).
N_c=Number of columns (dimensionless), see Table 23 of this subpart.
F_c=Effective column diameter (feet) [column perimeter (feet) 3.1416], see Table 24 of this subpart.

(B) Rim seal loss emissions shall be calculated using the following equation:

$$L_R = \frac{K_s V^n P \times D M_v K_c}{2204.6}$$

where:

M_v=Molecular weight of vapor in storage vessel (pound/pound mole).
P_A=Average atmospheric pressure (pounds per square inch absolute).
P=True vapor pressure at liquid storage temperature (pounds per square inch absolute).
D=Tank diameter (feet).
K_c=Product factor (dimensionless); use 1.0 for organic HAP's.
K_s=Seal factor [pound-mole/(feet (miles per hour)^n year)], see Table 25 of this subpart.
V=Average wind speed at the source (miles per hour). A value of 10 miles per hour may be assumed if source-specific data are not available.
n=Seal related wind speed exponent (dimensionless), see Table 25 of this subpart.
P*=Vapor pressure function (dimensionless),

$$P = \frac{\frac{P}{P_A}}{\left[1 + \left(1 - \frac{P}{P_a}\right)0.5\right]^2}$$

(C) Fitting loss emissions shall be calculated using the following equation:

$$\text{Fitting Loss (Mg/yr)} = \frac{F_f P \times M_v K_c}{2205}$$

where:

F_f=The total deck fitting loss factor (pound mole per year), and

$$F_f = \sum_{i=1}^{n} (N_{F_i} K_{F_i}) = [(N_{F_1} K_{F_1}) + (N_{F_2} K_{F_2}) + \ldots + (N_{F_n} K_{F_n})]$$

where:

N_{Fi}=Number of fittings of a particular type (dimensionless). N_{Fi} is determined for the specific tank or estimated from Tables 23 and 26 of this subpart.
K_{Fi}=Deck fitting loss factor for a particular type fitting (pound mole per year). K_{Fi} is determined for each fitting type from Table 26 of this subpart.
n=Number of different types of fittings (dimensionless).
2205=Constant (pound/megagram).
P*, M_v, K_c=as defined above.

(D) Deck seam loss emissions shall be calculated using the following equation:

$$\text{Deck Seam Loss (Mg/yr)} = \frac{K_D S_D D^2 P \times M_v K_c}{2204.6}$$

where:

K_D=Deck seam loss factor (pound-mole/feet year).
=0.34 for non-welded decks.
=0 for welded decks.
S_D=Deck seam length factor (feet/feet^2), see Table 27 of this subpart.
D, P*, M_v, K_c=as defined above.

(iv) The following equation shall be used for each external floating roof vessel (i) does not meet the specifications of § 63.119(c) of this Subpart to calculate $ES_{IACTUAL}$ in megagrams per month:

$$ES_{IACTUAL} = \frac{L_W + L_R + L_F}{12}$$

where:

L_W=Withdrawal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(A) of this section.
L_R=Rim seal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(B) of this section.
L_F=Fitting loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(C) of this section.

(A) Withdrawal loss emissions shall be calculated using the following equation:

$L_W = 4.28 * 10^{-4} QCW_L/D$

where:

Q=Throughput (gallons per year).
C=Shell clingage factor (barrel per 1,000 feet^2), see Table 22 of this subpart.
W_L=Average liquid density (pound/gallon).
D=Vessel diameter (feet).

(B) Seal loss emissions shall be calculated using the following equation:

$L_{SE} = K_s V^N P^* D M_v K_c/2205$

where:

K_s=Seal factor, see Table 28 of this subpart.
V=Average wind speed (miles per hour) at the source. A value of 10 miles per hour may be assumed if source-specific data are not available.
N=Seal wind speed exponent, see Table 28 of this subpart.
P*=Dimensionless vapor pressure function as defined in paragraph (f)(3)(iii)(B) of this section.
D=Vessel diameter in feet.
M_V=Molecular weight of the HAP in pound/pound-mole.
K_c=Dimensionless product factor (use 1.0 for volatile organic HAP's).
2205=Constant (pound/megagram).

(C) Fitting loss emissions shall be calculated using the following equation:

$L_{RF} = F_F P^* M_v K_c/2205$

where:

F_F=The total deck fitting loss factor (pound mole per year).

$$= \sum_{i=1}^{n} (N_{F_i} K_{F_i}) = [(N_{F_1} K_{F_1}) + (N_{F_2} K_{F_2}) + \ldots + (N_{F_n} K_{F_n})]$$

where:

N_{Fi}=Number of fittings of a particular type (dimensionless). N_{Fi} is determined for the specific tank or estimated from Tables 29 through 31 of this subpart.
K_{Fi}=Deck fitting loss factor for a particular type fitting (pound mole per year).
$=K_{Fai}+K_{Fbi}\ V^{mi}$, see Table 29 of this subpart for the appropriate values of K_{Fa}, K_{Fb}, and m for each fitting type.
P*, M_v, K_c = as defined above.

(4) Emissions from transfer racks shall be calculated as follows:

(i) The following equation shall be used for each transfer rack (i) to calculate ETR_{ui}:

$$ETR_{ui} = (1.20 \times 10^{-7}) \frac{SPMC}{T}$$

where:

ETR_{ui} = Uncontrolled transfer emission rate, megagrams per month.
S = Saturation factor (see Table 32 of this subpart).
P = Weighted average rack vapor pressure of organic HAP's transferred at the rack during the month, kilopascals.
M = Weighted average molecular weight of organic HAP's transferred at the rack during the month, gram/gram-mole.
G = Monthly volume of organic HAP transferred, liters per month.
T = Temperature of bulk liquid loaded, °Kelvin (°C+273).

(ii) The following equation shall be used for each transfer rack (i) to calculate the weighted average rack vapor pressure (P):

$$P = \frac{\sum_{1}^{j=n} (P_j)(G_j)}{G}$$

where:

P=Weighted average rack vapor pressure of organic HAP's transferred at the rack during the month, kilopascals.

P_j=Vapor pressure of individual organic HAP transferred at the rack, kilopascals.

G=Monthly volume of organic HAP transferred, liters per month.

G_j=Monthly volume of individual organic HAP transferred at the rack, liters.

n=Number of organic HAP's transferred at the rack.

(iii) The following equation shall be used for each transfer rack (i) to calculate the weighted average rack molecular weight (M):

$$M = \frac{\sum_{1}^{j=n} M_j G_j}{G}$$

where:

M=Weighted average molecular weight of organic HAP transferred at the rack during a month, gram/gram-mole.

M_j=Molecular weight of individual organic HAP transferred at the rack, gram/gram-mole.

G_j=Monthly volume of individual organic HAP transferred at the rack, liters per month.

n=Number of organic HAP's transferred at the rack.

(iv) The following procedures and equations shall be used to calculate $ETR_{iACTUAL}$:

(A) If the transfer rack is not controlled, $ETR_{iACTUAL}=ETR_{iu}$, where ETR_{iu} is calculated using the equations under paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(B) If the transfer rack is controlled using a control device or a pollution prevention measure achieving less than 98 percent reduction level associated with the reference control technology level,

$$ETR_{iACTUAL} = ETR_{iu}\left(\frac{1 - \text{Percent reduction}}{100\%}\right)$$

(1) The percent reduction for a combustion or recovery device shall be initially measured according to the equations and methods specified in § 63.128(a) of this Subpart. As other control techniques are used, percent reduction shall be demonstrated by an initial performance test or by a control design analysis and documented engineering calculations.

(2) Procedures for calculating the percent reduction for pollution prevention measures are specified in paragraph (i) of this section.

(5) Emissions from wastewater shall be calculated as follows: In paragraph (f)(5) of this section, the terms wastewater and wastewater stream are used to mean wastewater.

(i) The following equation shall be used for each wastewater stream (i) to calculate EWW_{ic}:

$$EWW_{ic} = (6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}(1-Fr_m)Fe_mHAP_{im} + (0.05)(6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}(Fr_mHAP_{im})$$

where:

EWW_{ic}=Monthly wastewater stream emission rate if wastewater stream (i) is controlled by the reference control technology, in megagrams per month.

Q_i=Average flow rate for wastewater stream (i), as determined by the procedure in § 63.144(e)(3) of this subpart, in liters per minute.

H_i=Number of hours during the month that wastewater stream (i) was discharged, in hours per month.

Fr_m=Strippability factor of HAP compound (m) in wastewater, from Table 33 of this subpart, dimensionless.

Fe_m=Fraction emitted of HAP compound (m) in wastewater from Table 33 of this subpart, dimensionless.

s=Total number of organic HAP compounds in wastewater stream (i).

HAP_{im}=Average organic HAP concentration of compound (m) in wastewater stream (i), in parts per million by weight, as determined for the point of generation using the sampling procedure in § 63.144(b)(3)(i) and (b)(3)(ii) of this subpart. To analyze the samples collected, (1) a test method or results from a test method that measures organic HAP concentrations in the wastewater, and that has been validated pursuant to section 5.1 or 5.3 of Method 301 of appendix A of this Part may be used; or (2) the procedures in § 63.144(b)(3)(iii)(A) of this Subpart may be used to determine the term C_{im} described below, and then HAP_{im} may be calculated from it using the following equation: $HAP_{im}=C_{im}/Fm_m$, where Fm_m for compound m is obtained from Table 13 of this Subpart.

C_{im}=Average VOHAP concentration of HAP compound (m) in wastewater stream (i), as determined for the point of generation according to the procedures in § 63.144(b)(3) of this Subpart, in parts per million by weight.

(A) Values for Q_i, C_{im}, and HAP_{im} may be determined during an initial performance test conducted under representative conditions. The average value obtained from three test runs shall be used. Monthly testing is not required.

(B) If there is a change to the process or operation such that the previously measured values of Q_i, C_{im}, and HAP_{im} are no longer representative, a new performance test shall be conducted.

(C) As an alternative to the performance testing specified in paragraphs (f)(5)(i) (A) and (B) of this section, Q_i may be determined from records or process knowledge as specified in § 63.144(a), and C_{im} and HAP_{im} may be determined through process knowledge as specified in § 63.144(b) of this Subpart.

(ii) The following equation shall be used to calculate $EWW_{iACTUAL}$ for each wastewater stream (i) which is managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of §§ 63.133 through 63.137 of this Subpart, respectively, or any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart:

$$EWW_{iACTUAL} = (6.0 \times 10^{-8}) Q_i H_i \sum_{m=1}^{s} Fe_m HAP_{im}$$

where:

$\Sigma EWW_{iACTUAL}$=Monthly wastewater stream emission rate if wastewater stream (i) is not controlled to the level of the reference control technology, in megagrams per month.

Q_i, H_i, s, F_{em}, and HAP_{im} are as defined and determined according to paragraph (f)(5)(i) of this section.

(iii) The following equation shall be used to calculate $EWW_{iACTUAL}$ for each wastewater stream (i) for which all wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators used to manage the wastewater stream meet the requirements of §§ 63.133 through 63.137 of this subpart and any other waste management unit or treatment process meets the requirements of § 63.138(h) of this subpart, and wastewater stream (i) is not controlled to the level of the reference control technology:

$$EWW_{iACTUAL} = (6.0 \times 10^{-8}) Q_i H_i \sum_{m=1}^{s} [Fe_m HAP_{im} (1 - PR_{im})]$$

where:

$EWW_{iACTUAL}$=Monthly wastewater stream emission rate if wastewater stream (i) is not controlled to the level of the reference control technology, in megagrams per month.

PR_{im}=The efficiency of the treatment process, or series of treatment processes, which treat wastewater stream (i), in reducing the emission potential of organic HAP compound (m) in wastewater, dimensionless, as calculated by:

$$PR_{im} = \frac{HAP_{im-in} - HAP_{im-out}}{HAP_{im-in}}$$

where:

HAP_{im-in}=Average concentration of HAP compound (m), defined and determined according to paragraph (f)(5)(i) of this section, in the wastewater entering the first treatment process in the series.

HAP_{im-out}=Average concentration of HAP compound (m), defined and determined according to paragraph (f)(5)(i) of this section, in the wastewater exiting the last treatment process in the series.

R_i=Organic reduction efficiency of the device used to control any vapor streams emitted and collected from wastewater stream (i) during treatment, as determined according to the procedures in § 63.145(f) of this subpart.

Q_i, H_i, s, F_{em}, and HAP_{im} are as defined and determined according to paragraph (f)(5)(i) of this section. Values of C_{m-in}, C_{m-out}, C_{im}, and HAP_{im} may be measured during an initial test or determined based on knowledge as provided in paragraph (f)(5)(i)(A), (B), and (C) of this section.

(g) Credits shall be calculated as follows:

(1) The overall equation for calculating source-wide credits is:

$$\text{Credits} = D \sum_{i=1}^{n} ((0.02)\,EPV1_{iu} - EPV1_{iACTUAL})$$

$$+ D \sum_{i=1}^{m} (EPV2_{iBASE} - EPV2_{iACTUAL})$$

$$+ D \sum_{i=1}^{n} ((0.05)\,ES1_{iu} - ES1_{iACTUAL})$$

$$+ D \sum_{i=1}^{m} (ES2_{iBASE} - ES2_{iACTUAL})$$

$$+ D \sum_{i=1}^{n} ((0.02)\,ETR1_{iu} - ETR1_{iACTUAL})$$

$$+ D \sum_{i=1}^{m} (ETR2_{iBASE} - ETR2_{iACTUAL})$$

$$+ D \sum_{i=1}^{n} (EWW1_{ic} - EWW1_{iACTUAL})$$

$$+ D \sum_{i=1}^{m} (EWW2_{iBASE} - EWW2_{iACTUAL})$$

where:

Credits and all terms of the equation are in units of megagrams per month, and the baseline date is November 15, 1990, except that for a pollution prevention measure initiated after 1987 or a control applied as part of the early reduction program or the 33/50 program, the baseline date is prior to initiation of the pollution prevention measure or the early reduction or 33/50 program control strategy, and

D=Discount factor=(A range of 0.8 to 1.0 is proposed. A single number will be selected at promulgation).

$EPV1_{iACTUAL}$=Emissions for each Group 1 process vent (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(2) of this section.

(0.02) $EPV1_{iu}$=Emissions from each Group 1 process vent (i) if the reference control technology had been applied to the uncontrolled emissions. EPV1iu is calculated according to paragraph (g)(2) of this section.

$EPV2_{iACTUAL}$=Emissions from each Group 2 process vent (i) that is controlled, calculated according to paragraph (g)(2) of this section.

$EPV2_{iBASE}$=Emissions from each Group 2 process vent (i) at the baseline date, as calculated in paragraph (g)(2) of this section.

$ES1_{iACTUAL}$=Emissions from each Group 1 storage vessel (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(3) of this section.

(0.05) $ES1_{iu}$=Emissions from each Group 1 storage vessel (i) if the reference control technology had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (g)(3) of this section.

$ES2_{iACTUAL}$=Emissions from each Group 2 storage vessel (i) that is controlled, calculated according to paragraph (g)(3) of this section.

$ES2_{iBASE}$=Emissions from each Group 2 storage vessel (i) at the baseline date, as calculated in paragraph (g)(3) of this section.

$ETR1_{iACTUAL}$=Emissions from each Group 1 transfer rack (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(4) of this section.

(0.02) $ETR1_{iu}$=Emissions from each Group 1 transfer rack (i) if the reference control technology had been applied to the uncontrolled emissions. $ETR1_{iu}$ is calculated according to paragraph (g)(4) of this section.

$ETR2_{iACTUAL}$=Emissions from each Group 2 transfer rack (i) that are controlled, calculated according to paragraph (g)(4) of this section.

$ETR2_{iBASE}$=Emissions from each Group 2 transfer rack (i) at the baseline date, as calculated in paragraph (g)(4) of this section.

$EWW1_{iACTUAL}$=Emissions from each Group 1 wastewater stream (i) that

is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(5) of this section.

$EWW1_{ic}$=Emissions from each Group 1 wastewater stream (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (g)(5) of this section.

$EWW2_{iACTUAL}$=Emissions from each Group 2 wastewater stream (i) that is controlled, calculated according to paragraph (g)(5) of this section.

$EWW2_{iBASE}$=Emissions from each Group 2 wastewater stream (i) at the baseline date, calculated according to paragraph (g)(5) of this section.

n=Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

m=Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

(2) Emissions from process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 process vents, $EPV1_{iu}$, shall be calculated according to the procedures and equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 process vents, $EPV1_{iACTUAL}$.

(A) If a Group 1 process vent is controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction,

$$EPV1_{iACTUAL} = EPV1_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(B) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device and paragraph (i) of this section for a pollution prevention measure.

(C) Combustion devices shall not be attributed a nominal efficiency greater than 98 percent, unless they have been assigned a higher nominal efficiency according to the procedures in paragraph (h) of this section.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 process vents, $EPV2_{iACTUAL}$:

(A) If a Group 2 process vent is controlled by a control device, a recovery device applied after 1987 as a pollution prevention project, or a pollution prevention measure achieving a percent reduction less than or equal to 98 percent reduction level associated with the reference control technology,

$$EPV2_{iACTUAL} = EPV2_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

(*1*) $EPV2_{iu}$ shall be calculated according to the equations and procedures in paragraph (f)(2)(i) and (f)(2)(ii) of this section, except as provided in paragraph (g)(2)(iii)(A)(*3*) below.

(*2*) The percent reduction shall be calculated according to the procedures in paragraph (f)(2)(iii)(B)(*1*), (*2*), and (*3*) of this section, except as provided in paragraph (g)(2)(iii)(A)(*4*) below.

(*3*) If a recovery device was added as part of a pollution prevention project initiated after 1987, $EPV2_{iu}$ shall be calculated prior to the recovery device. The equation in paragraph (f)(2)(ii) of this section shall be used to calculate $EPV2_{iu}$; however, the sampling site for measurement of vent stream flow rate, organic HAP concentration, and temperature shall be at the inlet of the recovery device.

(*4*) If a recovery device was added as part of a pollution prevention project initiated after 1987, the percent reduction shall be demonstrated by conducting a performance test at the inlet and outlet of the recovery device.

(B) If a Group 2 process vent is controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction,

$$EPV2_{iACTUAL} = EPV2_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(*1*) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device or in paragraph (i) of this section for a pollution prevention measure.

(2) Combustion devices shall not be attributed a nominal efficiency greater than 98 percent, unless they have been assigned a higher nominal efficiency according to the procedures in paragraph (h) of this section.

(iv) Emissions from Group 2 process vents at baseline, $EPV2i_{iBASE}$, shall be calculated as follows:

(A) If the process vent was uncontrolled on November 15, 1990, $EPV_{2iBASE} = EPV2_{iu}$ and shall be calculated according to the procedures and equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(B) If the process vent was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

$$EPV2_{iBASE} = EPV2_{iu}\left(1 - \frac{\text{Percent reduction }\%}{100\%}\right)$$

Where $EPV2_{iu}$ is calculated according to the equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. The percent reduction shall be calculated according to the procedures specified in paragraphs (f)(2)(iii)(B) (*1*), (*2*), and (*3*) of this section.

(C) If a recovery device was added to a process vent as part of a pollution prevention project initiated after 1987, $EPV2_{iBASE} = EPV2_{iu}$, where $EPV2_{iu}$ is calculated according to paragraph (g)(2)(iii)(A)(*3*) of this section.

(3) Emissions from storage vessels shall be determined as follows:

(i) Uncontrolled emissions from Group 1 storage vessels, $ES1_{iu}$, shall be calculated according to the equation in paragraph (f)(3)(i) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 storage vessels, $ES1_{iACTUAL}$.

(A) If a Group 1 storage vessel is controlled using a technology with an approved nominal efficiency greater than 95 percent or a pollution prevention measure achieving greater than 95 percent emission reduction,

$$ES1_{iACTUAL} = ES1_{iu}\left(1 - \frac{\text{Nominal efficiency }\%}{100\%}\right)$$

(B) Except as provided in paragraph (g)(3)(ii)(c) of this section, the nominal efficiency shall be determined as described in paragraph (h) of this section for a control device and paragraph (i) of this section for a pollution prevention measure.

(C) If a Group 1 Storage Vessel is controlled using a closed vent system and control device that is demonstrated to achieve at least 98 percent emission reduction, then the 98 percent can be used as the nominal efficiency in the equation in paragraph (g)(3)(ii)(A) of this section, and the owner or operator is not required to apply for a nominal efficiency according to paragraph (h) of this section.

(*1*) To demonstrate that 98 percent emission reduction is achieved, the owner or operator shall conduct a performance test according to the procedures in § 63.116 of this Subpart or use a design analysis. If a performance test is used, sampling sites shall be located at the inlet and outlet of the control device.

(*2*) The owner or operator shall report the results of the performance test and establish the range for the monitored parameter(s) in the Notification of Compliance Status required by § 63.152(b) of this subpart.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 storage vessels, $ES2_{iACTUAL}$:

(A) If a Group 2 storage vessel is controlled using a closed vent system and control device or a pollution prevention measure achieving a percent reduction less than or equal to the 95 percent reduction level associated with the reference control technology,

$$ES2_{iACTUAL} = ES2_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

where ES_{iu} is calculated according to the equations and procedures in paragraph (f)(3)(i) of this section.

(B) If a Group 2 storage vessel is controlled with an internal or external floating roof, $ES2_{iACTUAL}$ shall be calculated as specified in paragraph (f)(3)(iii) or (f)(3)(iv) of this section.

(C) If a Group 2 storage vessel is controlled using a technology with an approved nominal efficiency greater than 95 percent or a pollution prevention measure achieving greater than 95 percent reduction,

$$ES2_{iACTUAL} = ES2_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(1) The nominal efficiency for a control device shall be determined as described in paragraph (h) of this section, except as provided in paragraph (g)(3)(iii)(D) of this section.

(2) The nominal efficiency for a pollution prevention measure shall be determined as described in paragraph (i) of this section.

(D) If a Group 2 Storage Vessel is controlled using a closed vent system and control device that is demonstrated to achieve at least 98 percent emission reduction, then the 98 percent can be used as the nominal efficiency in the equation in paragraph (g)(3)(iii)(C) of this section, and the owner or operator is not required to apply for a nominal efficiency according to paragraph (h) of this section.

(1) To demonstrate that 98 percent emission reduction is achieved, the owner or operator shall conduct a performance test according to the procedures in § 63.116 of this Subpart or use a design analysis. If a performance test is used, sampling sites shall be located at the inlet and outlet of the control device.

(2) The owner or operator shall report the results of the performance test and establish the range for the monitored parameter(s) in the Notification of Compliance Status required by § 63.152(b) of this Subpart.

(iv) Emissions from Group 2 storage vessels at baseline, $ES2_{iBASE}$, shall be calculated as follows:

(A) If the vessel was not controlled with an internal floating roof, an external floating roof, a closed vent system and control device, or another control technique on November 15, 1990, $ES2_{iBASE} = ES2_{iu}$ and shall be calculated according to the procedures and equations in paragraph (f)(3)(i) of this section.

(B) If the storage vessel was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

(1) The equations in paragraph (f)(3)(iii) of this section shall be used to calculate $ES2_{iBASE}$ for vessels controlled with an internal floating roof.

(2) The equations in paragraph (f)(3)(iv) of this section shall be used to calculate $ES2_{iBASE}$ for vessels controlled with an external floating roof.

(3) The following equations shall be used to calculate $ES2_{iBASE}$ for vessels controlled with a closed vent system and control device,

$$ES2_{iBASE} = ES2_{iu}\left(1 - \frac{\text{Percent reduction \%}}{100\%}\right)$$

where ES_{iu} is calculated according to the equations in paragraph (f)(3)(i) of this section.

(4) Emissions from transfer racks shall be determined as follows:

(i) Uncontrolled emissions from Group 1 transfer racks, $ETR1_{iu}$, shall be calculated as described in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 transfer racks, $ETR1_{iACTUAL}$:

(A) If a Group 1 transfer rack is controlled using a technology, other than the reference control technology, with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction,

$$ETR1_{iACTUAL} = ETR1_{iu}\left(1 - \frac{\text{Nominal efficiency}}{100\%}\right)$$

(B) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device other than the reference technology and paragraph (i) of this section for a pollution prevention measure.

(C) Combustion devices, carbon adsorbers, absorbers, and condensers shall not be attributed a nominal efficiency greater than 98 percent.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 transfer racks, $ETR2_{iACTUAL}$:

(A) If a Group 2 transfer rack is controlled by a control device or a pollution prevention measure achieving a percent reduction less than or equal to the 98 percent level associated with the reference control technology,

$$ETR2_{iACTUAL} = ETR2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

(1) ETR_{iu} shall be calculated according to the equations and procedures in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(2) The percent reduction shall be calculated according to the procedures in paragraph (f)(4)(iv)(B) (1) and (2) of this section.

(B) If a Group 2 transfer rack is controlled using a technology, other than the reference control technology, with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction,

$$ETR2_{iACTUAL} = ETR2_{iu}\left(1 - \frac{\text{Nominal efficiency}}{100\%}\right)$$

(1) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device or in paragraph (i) of this section for a pollution prevention measure.

(2) Combustion devices, carbon adsorbers, absorbers, and condensers shall not be attributed a nominal efficiency greater than 98 percent.

(iv) Emissions from Group 2 transfer racks at baseline, $ETR2_{iBASE}$, shall be calculated as follows:

(A) If the transfer rack was uncontrolled on November 15, 1990, $ETR2_{iBASE} = ETR2_{iu}$ and shall be calculated according to the procedures and equations in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(B) If the transfer rack was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

$$ETR2_{iBASE} = ETR2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

where $ETR2_{iu}$ is calculated according to the equations in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. Percent reduction shall be calculated according to the procedures in paragraphs (f)(4)(iv)(B)(1) and (2) of this section.

(5) Emissions from wastewater shall be determined as follows. In paragraph (g)(5) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

(i) $EWW1_{ic}$ shall be calculated according to the equation for EWW_{ic} in paragraph (f)(5)(i) of this section.

(ii) $EWW2_{iBASE}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(ii) of this section for each wastewater stream (i), which, on the baseline date specified in paragraph (g)(1) of this section, was untreated, or which was managed either in a wastewater tank, surface impoundment, container, individual drain system or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(iii) $EWW2_{iBASE}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(iii) of this section for each wastewater stream (i), for which all tanks, surface impoundments, containers, individual drain systems and oil-water separators used to manage the wastewater stream met the requirements of § 63.133 through § 63.137 of this subpart, respectively, and for which all other waste management units or treatment processes used to manage the wastewater stream met the requirements of § 63.138(h) of this subpart on the baseline date specified in paragraph (g)(1) of this section.

(iv) $EWW2_{iACTUAL}$ shall be calculated as follows:

(A) $EWW2_{iACTUAL}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(iii) of this section for each wastewater stream (i) which is controlled to a level less stringent than, or equivalent to, the reference control technology level. Group 2 streams are not considered to be controlled if they are not treated by a treatment process, or if they are managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(B) If a Group 2 wastewater stream is controlled to a level more stringent than the level of the reference control technology, the procedures for calculating $EWW1_{iACTUAL}$ in paragraph (g)(5)(v) of this section shall be used to calculate $EWW2_{iACTUAL}$.

(v) The following equations for $EWW1_{iACTUAL}$ shall be used to calculate emissions from each Group 1 wastewater stream (i) that is controlled

to a level more stringent than the reference control technology. Group 1 streams are not considered to be controlled to or above the level of the reference control technology if they are managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(A) If the Group 1 wastewater stream (i) is controlled using a treatment process or series of treatment processes which achieve an approved nominal reduction efficiency in the total VOHAP concentration of stream (i) greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, but the control device used to reduce HAP emissions from the vapor stream(s) vented from the treatment process(es) achieves an efficiency equal to the 95 percent of the reference control technology, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[Fe_mHAP_{im}(1-PR_{im})] + 0.05(6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[HAP_{im}PR_{im}]$$

where all terms are as defined and determined in paragraph (f)(5) of this section.

(B) If the Group 1 wastewater stream (i) is not controlled using a treatment process or series of treatment processes which achieves a total VOHAP concentration reduction greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, but the vapor stream(s) vented from the treatment process(es) are controlled using a device, other than the reference control technology, for which EPA has approved a nominal efficiency greater than 95 percent, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[Fe_mHAP_{im}(1-Fr_m)]$$

$$+\left(1-\frac{\text{Nominal efficiency \%}}{100}\right)(6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[HAP_{im}Fr_m]$$

where all terms other than nominal efficiency are as defined and determined in paragraph (f)(5) of this section.

(C) If the Group 1 wastewater stream (i) is controlled using a treatment process or series of treatment processes which achieves a total VOHAP concentration reduction greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, and the vapor stream(s) vented from the treatment process are controlled using a device, other than the reference control technology, with an approved nominal efficiency greater than 95 percent, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[Fe_mHAP_{im}(1-PR_m)]$$

$$+\left(1-\frac{\text{Nominal efficiency \%}}{100}\right)(6.0\times10^{-8})Q_iH_i\sum_{m=1}^{s}[HAP_{im}PR_m]$$

where all terms other than nominal efficiency are as defined and determined in paragraph (f)(5) of this section.

(D) The nominal efficiency for a treatment process or control device shall be determined as described in paragraph (h) of this section.

(h) The following procedures shall be followed to establish a nominal efficiency for any control technology achieving greater emission reduction than the percentage efficiency assigned to the reference control technology in § 63.111 of this subpart. The procedures in paragraphs (h)(1) through (h)(5) of this section shall be followed for control technologies that are different in use or design from the reference control technologies. The procedures in paragraph (h)(6) of this section shall be followed for process vents controlled by reference control technologies that can be demonstrated to consistently achieve

a higher control efficiency than that which has been assigned by the proposed rule to that particular type of device.

(1) The owner or operator seeking permission to take credit for use of a technology that is different in use or design from the reference control technology shall submit the information specified in paragraphs (h)(1)(i) through (h)(1)(iv) of this section in writing to the Director of the EPA Office of Air Quality Planning and Standards:

(i) Emission stream characteristics of each emission point to which the control technology is or will be applied including the kind of emission points, flow, organic HAP concentration, and all other stream characteristics necessary to design the control technology or determine its performance,

(ii) Description of the control technology including design specifications,

(iii) Documentation demonstrating to the Director's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA method or any other method validated according to Method 301 of appendix A of this part. If it is infeasible to obtain test data, documentation may include a design analysis and engineering calculations. The basis of the calculational procedures and all inputs and assumptions made in the calculations shall be documented.

(iv) A description of the parameter or parameters to be monitored to ensure that the control technology will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) The Director shall determine within 120 days whether an application presents sufficient information to determine nominal efficiency. The Director reserves the right to request specific data in addition to the items listed in paragraph (h)(1) of this section.

(3) The Director shall determine within 120 days of the submittal of sufficient data whether a device shall have a nominal control efficiency and the level of that nominal efficiency. If, in the Director's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Director will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

(4) The Director may condition permission to take emission credits for use of the control technology on requirements that may be necessary to ensure operation and maintenance to achieve the specified nominal efficiency.

(5) In those cases where the owner or operator is seeking permission to take credit for use of a technology that is different in use or design from the reference control technology and the different technology will be used in no more than three applications, the information listed in paragraphs (h)(1)(i) through (h)(1)(iv) can be submitted to the operating permit authority for the source instead of the Director. In these instances, use and conditions for use of the different technology can be approved as part of an operating permit application or modification. In these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

(i) If, in reviewing the application, the operating permit authority believes the technology has broad applicability for use by other sources, the authority shall submit the information provided in the application to the Director of the EPA Office of Air Quality Planning and Standards. The Director shall review the technology for broad applicability and may publish a **Federal Register** notice; however, this EPA review shall not affect the operating permit authority's approval of the nominal efficiency of the technology for the specific application.

(ii) If, in reviewing an application for a process vent control, the operating permit authority determines that the technology is not different in use and design from the reference control technology, the authority shall submit the application to the Director of the EPA Office of Air Quality Planning and Standards. The procedures in paragraph (h)(6) of this section shall be followed for submission of information, review, and approval of the nominal efficiency. If, in reviewing an application for a control for an emission point other than a process vent, the operating permit authority determines the technology is not different in use or design from the reference control technology and is not a closed vent system for a storage vessel, the authority shall deny the application.

(6) An owner or operator seeking permission to take credit for a process vent using reference control technology that achieves a percent emission reduction efficiency higher than the percent assigned to the reference control technology in § 63.111 shall submit the information in paragraphs (h)(6)(i) through (h)(6)(iv) of this section to the Director of the EPA Office of Air Quality Planning and Standards. The procedures in paragraphs (h)(2) through (h)(4) of this section shall be followed for review and approval of the nominal efficiency of the control technology in the specified application.

(i) Emission stream characteristics of each process vent to which the control technology is or will be applied including the flow, organic HAP concentration, and all other vent stream characteristics necessary to design the control technology or determine its performance,

(ii) Description of the control technology including design specifications,

(iii) Documentation demonstrating to the Director's satisfaction that the technology in the intended application achieves 99.9 percent or greater emission reduction. This documentation shall include performance test data collected using an appropriate EPA method or any other method or data validated according to Method 301 of appendix A of this part.

(iv) A plan for instituting continuous emissions monitoring to demonstrate that 99.9 percent emission reduction is achieved on a continuous basis.

(i) The following procedures shall be used for calculating the efficiency (percent reduction) of pollution prevention measures:

(1) A pollution prevention measure is any practice which meets the criteria of paragraphs (i)(1)(i) and (ii) of this section.

(i) A pollution prevention measure is any practice which results in a lesser quantity of organic HAP emissions released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same quantity of the same product is produced.

(ii) Pollution prevention measures may include substitution of non-toxic for toxic feedstocks in making a product; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials.

(2) The emission reduction efficiency of pollution prevention measures implemented after 1987 can be used in calculating the actual emissions from an emission point in the debit and credit equations in § 63.150 (f) and (g) of this subpart.

(i) For pollution prevention measures, the percent reduction used in the equations in paragraphs (f)(2), (f)(3), (f)(4), and (f)(5) of this section, and paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, is the percent difference between the monthly organic HAP

emissions for each emission point after the pollution prevention measure for the most recent month versus monthly emissions from the same emission point before the pollution prevention measure, adjusted by the volume of product produced during the two monthly periods.

(ii) The following equation shall be used to calculate the percent reduction of a pollution prevention measure for each emission point.

$$E_B = \sum_{i=1}^{n} \left[(6.0 \times 10^{-8}) Q_{Bi} H_{Bi} \sum_{m=1}^{s} Fe_m HAP_{Bim} \right]$$

where:

Percent reduction=Efficiency of pollution prevention measure (percent organic HAP reduction).

E_B=Monthly emissions before the pollution prevention measure, determined as specified in paragraph (i)(2)(ii) (A), (B), and (C) of this section.

E_{pp}=Monthly emissions after the pollution prevention measure, as determined for the most recent month, determined as specified in paragraph (i)(2)(ii)(C) or (D) of this section.

P_B=Monthly production before the pollution prevention measure, during the same period over which E_B is calculated.

P_{pp}=Monthly production after the pollution prevention measure, as determined for the most recent month.

(A) The monthly emissions before the pollution prevention measure, E_B, shall be determined in a manner consistent with the equations and procedures in paragraphs (f)(2), (f)(3), and (f)(4) of this section for process vents, storage vessels, and transfer operations.

(B) For wastewater, E_B shall be calculated as follows. In paragraph (i)(2)(ii)(B) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

$$\text{Percent reduction} = \frac{E_B - \frac{(E_{pp} \times P_B)}{P_{pp}}}{E_B} \times 100\%$$

where:

n=Number of wastewater streams.

Q_{Bi}=Average flow rate for wastewater stream (i) before the pollution prevention measure, as determined by the procedure in § 63.144(e)(3) of this Subpart, liters per minute, before implementation of the pollution prevention measure.

H_{Bi}=Number of hours per month that wastewater stream (i) was discharged before the pollution prevention measure, hours per month.

s=Total number of organic HAP compounds in wastewater stream (i).

Fe_m=Fraction emitted of HAP compound (m) in wastewater from Table 33 of this Subpart, dimensionless.

HAP_{Bim}=Average organic HAP concentration of compound (m) in wastewater stream (i), defined and determined according to paragraph (f)(5)(i) of this section, before the pollution prevention measure, in parts per million by weight, as measured before the implementation of the pollution measure.

(*1*) Values for Q_{Bi} and HAP_{Bim} may be determined during an initial performance test conducted under representative conditions, or

(*2*) Values for Q_{Bi} may be determined from records as specified in § 63.144(a) of this subpart, and values for HAP_{Bim} may be determined through process knowledge as specified in § 63.144(b) of this subpart.

(C) If the pollution prevention measure was implemented prior to the effective date of the regulation, records may be used to determine E_B.

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined by testing or by design analysis and documented engineering calculations. Once an emissions to production ratio has been established, this can be used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated using the following equation. In paragraph (i)(2)(ii)(E) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

$$E_{pp} = \sum_{i=1}^{n} \left[(6.0 \times 10^{-8}) Q_{ppi} H_{ppi} \sum_{m=1}^{s} Fe_m HAP_{ppim} \right]$$

where:

n, Q_{ppi}, H_{ppi}, s, Fe_m, and HAP_{ppim} are defined and determined as described above under the definition of E_B, except that Q_{ppi}, H_{ppi}, and HAP_{ppim} shall be determined after the pollution prevention measure has been implemented.

(iii) All equations, calculations, test procedures, test results, and other information used to determine the percent reduction achieved by a pollution prevention measure for each emission point shall be fully documented.

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point must be calculated.

(v) For the purposes of the equations in paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, used to calculate credits for emission points controlled more stringently than the reference technology in paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of a source is not required to apply to the Director for a nominal efficiency and is not subject to paragraph (h) of this section.

TABLE 20.—AVERAGE STORAGE TEMPERATURE (T_S) AS A FUNCTION OF TANK PAINT COLOR

Tank color	Average Storage Temperature (T_S)
White	T_A[a]+0
Aluminum	T_A+2.5
Gray	T_A+3.5
Black	T_A+5.0

[a] T_A is the average annual ambient temperature in degrees Fahrenheit.

TABLE 21.—PAINT FACTORS FOR FIXED ROOF TANKS

Tank color		Paint Factors (F_p) paint condition	
Roof	Shell	Good	Poor
White	White	1.00	1.15
Aluminum (specular)	White	1.04	1.18
White	Aluminum (specular)	1.16	1.24
Aluminum (specular)	Aluminum (specular)	1.20	1.29
White	Aluminum (diffuse)	1.30	1.38
Aluminum (diffuse)	Aluminum (diffuse)	1.39	1.46
White	Gray	1.30	1.38
Light gray	Light gray	1.33	1.44
Medium gray	Medium gray	1.40	1.58

TABLE 22.—AVERAGE CLINGAGE FACTORS (C)[a]

Liquid	Shell condition		
	Light rust[b]	Dense rust	Gunite lined
Gasoline	0.0015	0.0075	0.15
Single component stocks	0.0015	0.0075	0.15
Crude oil	0.0060	0.030	0.60

[a] Units for average clingage factors are barrels per 1,000 square feet.
[b] If no specific information is available, these values can be assumed to represent the most common condition of tanks currently in use.

TABLE 23.—TYPICAL NUMBER OF COLUMNS AS A FUNCTION OF TANK DIAMETER FOR INTERNAL FLOATING ROOF TANKS WITH COLUMN SUPPORTED FIXED ROOFS[a]

Tank diameter range (D in feet)	Typical number of columns, (N_c)
0 < D ≤ 85	1
85 < D ≤ 100	6
100 < D ≤ 120	7
120 < D ≤ 135	8
135 < D ≤ 150	9
150 < D ≤ 170	16
170 < D ≤ 190	19
190 < D ≤ 220	22
220 < D ≤ 235	31
235 < D ≤ 270	37
270 < D ≤ 275	43
275 < D ≤ 290	49
290 < D ≤ 330	61
330 < D ≤ 360	71
360 < D ≤ 400	81

[a] Data in this table should not supersede information on actual tanks.

TABLE 24.—EFFECTIVE COLUMN DIAMETER (F_c)

Column type	F_c (feet)
9-inch by 7-inch built-up columns	1.1
8-inch-diameter pipe columns	0.7
No construction details known	1.0

TABLE 25.—SEAL RELATED FACTORS FOR INTERNAL FLOATING ROOF VESSELS

Seal type	K_s	n
Liquid mounted resilient seal:		
Primary seal only	3.0	0
With rim-mounted secondary seal[a]	1.6	0
Vapor mounted resilient seal:		
Primary seal only	6.7	0
With rim-mounted secondary seal[a]	2.5	0

[a] If vessel-specific information is not available about the secondary seal, assume only a primary seal is present.

TABLE 26.—SUMMARY OF INTERNAL FLOATING DECK FITTING LOSS FACTORS (K_F) and Typical Number of Fittings (N_F)

Deck fitting type	Deck fitting loss factor (K_F)[a]	Typical number of fittings (N_F)
Access hatch		1
Bolted cover, gasketed	1.6	
Unbolted cover, gasketed	11	
Unbolted cover, ungasketed	[b]25	
Automatic gauge float well		1
Bolted cover, gasketed	5.1	
Unbolted cover, gasketed	15	
Unbolted cover, ungasketed	[b]28	
Column well		[c]
Builtup column-sliding cover, gasketed	33	
Builtup column-sliding cover, ungasketed	[c]47	
Pipe column-flexible fabric sleeve seal	10	
Pipe column-sliding cover, gasketed	19	
Pipe column-sliding cover, ungasketed	32	
Ladder well		1
Sliding cover, gasketed	56	
Sliding cover, ungasketed	[b]76	
Roof leg or hanger well		[c](5+D/10+D^2/600)
Adjustable	[b]7.9	
Fixed	0	
Sample pipe or well		1
Slotted pipe-sliding cover, gasketed	44	
Slotted pipe-sliding cover, ungasketed	57	
Sample well-slit fabric seal, 10 percent open area	[b]12	
Stub drain, 1-in diameter[d]	1.2	[c](D^2/125)
Vacuum breaker		1
Weighted mechanical actuation, gasketed	[b]0.7	
Weighted mechanical actuation, ungasketed	0.9	

[a] Units for K_F are pound-moles per year.
[b] If no specific information is available, this value can be assumed to represent the most common/typical deck fittings currently used.
[c] D=Tank diameter (feet).
[d] Not used on welded contact internal floating decks.
[e] See Table 23.

TABLE 27.—DECK SEAM LENGTH FACTORS[a] (S_D) FOR INTERNAL FLOATING ROOF TANKS

Deck construction	Typical deck seam length factor
Continuous sheet construction[b]	
5-feet wide sheets	[c]0.2
6-feet wide sheets	0.17
7-feet wide sheets	0.14

TABLE 27.—DECK SEAM LENGTH FACTORS[a] (S_D) FOR INTERNAL FLOATING ROOF TANKS—Continued

Deck construction	Typical deck seam length factor
Panel construction[d]	
5×7.5 feet rectangular	0.33
5×12 feet rectangular	0.28

[a] Deck seam loss applies to bolted decks only. Units for S_D are feet per square feet.
[b] S_D=1/W, where W=sheet width (feet).
[c] If no specific information is available, these factors can be assumed to represent the most common bolted decks currently in use.
[d] S_D=(L+W)/LW, where W=panel width (feet), and L=panel length (feet).

TABLE 28.—SEAL RELATED FACTORS FOR EXTERNAL FLOATING ROOF VESSELS

Seal type	Welded vessels		Riveted vessels	
	K_S	N	K_S	N
Metallic shoe seal:				
Primary seal only	1.2	1.5	1.3	1.5
With shoe-mounted secondary seal	0.8	1.2	1.4	1.2
With rim-mounted secondary seal	0.2	1.0	0.2	1.6
Liquid mounted resilient seal:				
Primary seal only	1.1	1.0	[a]NA	NA
With weather shield	0.8	0.9	NA	NA
With rim-mounted secondary seal	0.7	0.4	NA	NA
Vapor mounted resilient seal:				
Primary seal only	1.2	2.3	NA	NA
With weather shield	0.9	2.2	NA	NA
With rim-mounted secondary seal	0.2	2.6	NA	NA

[a] NA=Not applicable.

TABLE 29.—ROOF FITTING LOSS FACTORS,[a] K_{Fa}, K_{Fb}, AND m, AND TYPICAL NUMBER OF ROOF FITTINGS, N_T

Fitting type and construction details	Loss factors[b]			Typical number of fittings, N_T
	K_{Fa} (lb-mole/yr)	K_{Fb}(lb-mole/[mi/hr]^m-yr)	m (dimensionless)	
Access hatch (24-in-diameter well)	0	0	[c]0	1.
Bolted cover, gasketed	2.7	7.1	1.0	
Unbolted cover, ungasketed	2.9	0.41	1.0	
Unbolted cover, gasketed				
Unslotted guide-pole well (8-in-diameter unslotted pole, 21-in-diameter well).	0	6.7	0.98	1.
Ungasketed sliding cover	0	3.0	[c]	
Gasketed sliding cover				
Slotted guide-pole/sample well (8-in-diameter unslotted pole, 21-in-diameter well).				[d].
Ungasketed sliding cover, without float	0	310	1.2	
Ungasketed sliding cover, with float	0	29	2.0	
Gasketed sliding cover, without float	0	260	1.2	
Gasketed sliding cover, with float	0	6.5	2.4	
Gauge-float well (20-inch diameter)	2.3	5.9	[c]1.0	1.
Unbolted cover, ungasketed	2.4	0.34	1.0	
Unbolted cover, gasketed	0	0	0	
Bolted cover, gasketed				
Gauge-hatch/sample well (8-inch diameter)	0.95	0.14	[c]1.0	1.
Weighted mechanical actuation, gasketed	0.91	2.4	1.0	
Weighted mechanical actuation, ungasketed				
Vacuum breaker (10-inch-diameter well)	1.2	0.17	[c]1.0	N_{F7} (Table–30).
Weighted mechanical actuation, gasketed	1.2	3.0	1.0	
Weighted mechanical actuation, ungasketed				
Roof drain (3-inch diameter)				N_{F7} (Table–30).
Open	0	7.0		[c]1.4
90 percent closed	0.51	0.81	1.0	
Roof leg (3-inch diameter)				N_{F8} (Table–31[f]).
Adjustable, pontoon area	1.5	0.20		[c]1.0
Adjustable, center area	0.25	0.06		[c]1.0

TABLE 29.—ROOF FITTING LOSS FACTORS,[a] K_{Fa}, K_{Fb}, AND m, AND TYPICAL NUMBER OF ROOF FITTINGS, N_T—Continued

Fitting type and construction details	Loss factors[b]			Typical number of fittings, N_T
	K_{Fa} (lb-mole/yr)	K_{Fb} (lb-mole/[mi/hr]^m-yr)	m (dimensionless)	
Adjustable, double-deck roofs	.0	0.06	0	
Fixed	.....	.7	.....	
Roof leg (2½ inch diameter)	1.7	0	0	N_{F8} (Table–31[f]).
Adjustable, pontoon area	0.41	0	0	
Adjustable, center area	0.41	0	0	
Adjustable, double-deck roofs	0	0	0	
Fixed	.....	.....	.....	
Rim vent (6-inch diameter)	.....	.....	.....	[g]1.
Weighted mechanical actuation, gasketed	0.71	0.10	[c]1.0	
Weighted mechanical actuation, ungasketed	0.68	1.6	1.0	

[a] The roof fitting loss factors, K_{Fa}, K_{Fb}, and m, may only be used for wind speeds from 2 to 15 miles per hour.
[b] Unit abbreviations are as follows: lb=pound; mi=miles; hr=hour; yr=year.
[c] If no specific information is available, this value can be assumed to represent the most common or typical roof fittings currently in use.
[d] A slotted guide-pole/sample well is an optional fitting and is not typically used.
[e] Roof drains that drain excess rainwater into the product are not used on pontoon floating roofs. They are, however, used on double-deck floating roofs and are typically left open.
[f] The most common roof leg diameter is 3 inches. The loss factors for 2½ inch diameter roof legs are provided for use if this smaller size roof is used on a particular floating roof.
[g] Rim vents are used only with mechanical-shoe primary seals.

TABLE 30.—TYPICAL NUMBER OF VACUUM BREAKERS, N_{F6} AND ROOF DRAINS,[a] N_{F7}

Tank diameter D (feet)[b]	No. of vacuum breakers, N_{F6}		No. of roof drains, N_{F7} (double-deck roof)[c]
	Pontoon roof	Double-deck roof	
50	1	1	1
100	1	1	1
150	2	2	2
200	3	2	3
250	4	3	5
300	5	3	7
350	6	4	d
400	7	4	d

[a] This table should not supersede information based on actual tank data.
[b] If the actual diameter is between the diameters listed, the closest diameter listed should be used. If the actual diameter is midway between the diameters listed, the next larger diameter should be used.
[c] Roof drains that drain excess rainwater into the product are not used on pontoon floating roofs. They are, however, used on double-deck floating roofs, and are typically left open.
[d] For tanks more than 300 feet in diameter, actual tank data or the manufacturer's recommendations may be needed for the number of roof drains.

TABLE 31.—TYPICAL NUMBER OF ROOF LEGS,[a] N_{F8}

Tank diameter D (feet)[b]	Pontoon roof		No. of legs on double-deck roof
	No. of pontoon legs	No. of center legs	
30	4	2	6
40	4	4	7
50	6	6	8
60	9	7	10
70	13	9	13
80	15	10	16
90	16	12	20
100	17	16	25
110	18	20	29
120	19	24	34
130	20	28	40
140	21	33	46
150	23	38	52
160	26	42	58
170	27	49	66
180	28	56	74
190	29	62	82
200	30	69	90
210	31	77	98
220	32	83	107
230	33	92	115

TABLE 31.—TYPICAL NUMBER OF ROOF LEGS,[a] N_{FS}—Continued

Tank diameter D (feet)[b]	Pontoon roof		No. of legs on double-deck roof
	No. of pontoon legs	No. of center legs	
240	34	101	127
250	34	109	138
260	36	118	149
270	36	126	162
280	37	138	173
290	38	148	186
300	38	156	200
310	39	168	213
320	39	179	226
330	40	190	240
340	41	202	255
350	42	213	270
360	44	226	285
370	45	238	300
380	46	252	315
390	47	266	330
400	48	281	345

[a] This table should not supersede information based on actual tank data.
[b] If the actual diameter is between the diameters listed, the closest diameter listed should be used. If the actual diameter is midway between the diameters listed, the next larger diameter should be used.

TABLE 32.—SATURATION FACTORS

Cargo carrier	Mode of operation	S factor
Tank trucks and rail tank cars.	Submerged loading of a clean cargo tank.	0.50
	Submerged loading: dedicated normal service.	0.60
	Submerged loading: dedicated vapor balance service.	1.00
	Splash loading of a clean cargo tank.	1.45
	Splash loading: dedicated normal service.	1.45
	Splash loading: dedicated vapor balance service.	1.00

TABLE 33.—FRACTION REMOVED (Fr) FOR HAP COMPOUNDS IN WASTEWATER STREAMS

Chemical name	Fr
Acetaldehyde	1.000
Acetonitrile	0.934
Acetophenone	0.920
Acrolein	0.957
Acrylonitrile	0.960
Allyl chloride	1.000
Aniline	0.468
Benzene	1.000
Benzyl chloride	1.000
Biphenyl	1.000
Bromoform	1.000
1,3-Butadiene	1.000
Carbon disulfide	1.000
Carbon tetrachloride	1.000
2-Chloroacetophenone	0.939
Chlorobenzene	1.000

TABLE 33.—FRACTION REMOVED (Fr) FOR HAP COMPOUNDS IN WASTEWATER STREAMS—Continued

Chemical name	Fr
Chloroform	1.000
Chloroprene (2-Chloro-1,3-Butadiene)	1.000
o-Cresol	0.448
Cumene (isopropyl benzene)	1.000
1,4-Dichlorobenzene(p)	1.000
Dichloroethyl ether	0.935
1,3-Dichloropropene	1.000
N,N-Dimethylaniline	0.927
Diethyl sulfate	0.814
3,3'-Dimethylbenzidine	0.635
1,1-Dimethylhydrazine	0.448
Dimethyl sulfate	0.697
2,4-Dinitrophenol	0.908
2,4-Dinitrotoluene	0.626
1,4-Dioxane (1,4-Diethyleneoxide)	0.787
Epichlorohydrin(1-Chloro-2,3-epoxypropane)	0.890
Ethyl acrylate	0.961
Ethylbenzene	1.000
Ethyl chloride (Chloroethane)	1.000
Ethylene dibromide	1.000
Ethylene dichloride (1,2-Dichloroethane)	1.000
Ethylene oxide	1.000
Ethylidene dichloride (1,1-Dichloroethane)	1.000
Diethylene glycol dimethyl ether	0.425
Ethylene glycol monomethyl ether acetate	0.529
Ethylene glycol dimethyl ether	0.943
Diethylene glycol diethyl ether	0.523
Ethylene glycol monobutyl ether acetate	0.927
Ethylene glycol monoethyl ether acetate	0.470
Hexachlorobenzene	1.000
Hexachlorobutadiene	1.000
Hexachloroethane	1.000
Hexane	1.000
Isophorone	0.945

TABLE 33.—FRACTION REMOVED (Fr) FOR HAP COMPOUNDS IN WASTEWATER STREAMS—Continued

Chemical name	Fr
Methanol	0.829
Methyl bromide (Bromomethane)	1.000
Methyl chloride (Chloromethane)	1.000
Methyl chloroform (1,1,1-Trichloroethane)	1.000
Methyl ethyl ketone (2-Butanone)	1.000
Methyl isobutyl ketone (Hexone)	1.000
Methyl methacrylate	0.958
Methyl tert-butyl ether	1.000
Methylene chloride (Dichloromethane)	1.000
Naphthalene	1.000
Nitrobenzene	0.936
2-Nitropropane	1.000
Phosgene	1.000
Propionaldehyde	0.952
Propylene dichloride (1,2-Dichloropropane)	1.000
Propylene oxide	1.000
Styrene	1.000
1,1,2,2-Tetrachloroethane	1.000
Tetrachloroethylene (Perchloroethylene)	1.000
Toluene	1.000
o-Toluidine	0.487
1,2,4-Trichlorobenzene	1.000
1,1,2-Trichloroethane	1.000
Trichloroethylene	1.000
2,4,5-Trichlorophenol	0.914
Triethylamine	1.000
2,2,4-Trimethylpentane	1.000
Vinyl acetate	1.000
Vinyl chloride	1.000
Vinylidene chloride (1,1-Dichloroethylene)	1.000
m-Xylene	1.000
o-Xylene	1.000
p-Xylene	1.000

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–4534–4]

Standards of Performance for New Stationary Sources; Appendix A—Test Methods; Revisions to Methods 18 and 26 and Addition of Method 26A to Appendix A

Correction

In proposed rule document 92-28293 beginning on page 62798 in the issue of Thursday, December 31, 1992, various portions of the document were illegible and several illustrations were incorrectly published at the end of the document. For clarification, the proposed rule is reprinted below. Also, the FR Document number appearing at the end of the document is correctly noted above.

SUMMARY: The purpose of this action is to propose revisions to Method 18, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography" and to Method 26, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Midget Impinger Method," and to propose the addition of Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method," to appendix A of 40 CFR part 60. Proposed regulations published in a separate announcement under 40 CFR part 63 entitled "National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical (SOCMI) Industry," include testing requirements for hydrogen halides and halogens after incineration control devices. Method 18 is being revised to clarify the phrase "engineering judgment" as it relates to choosing a sampling methodology. Method 26 for anisokinetic determination of hydrogen chloride emissions is being revised to add provisions for determining emissions of other hydrogen halides and halogens. Method 26A is being proposed as an isokinetic version of Method 26.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed test methods.

DATES: *Comments.* Comments must be received on or before March 31, 1993.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 21, 1993, a public hearing will be held on February 10, 1993 beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 21, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention: Docket Number A–90–19, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Robin R. Segall, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0893.

Docket. Docket No. A–90–19, containing materials relevant to this rulemaking, is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M–1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terry Harrison or Robin R. Segall, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5233.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 18 was developed for and is currently applicable to the speciation of total gaseous organics in a sample to determine emissions of individual organic compounds. In response to questions from industry representatives seeking to use the method for compliance demonstrations, the EPA is proposing to clarify the phrase "engineering judgment" as it relates to choosing a sampling and analytical methodology. In the proposed revision, an owner or operator will perform a laboratory evaluation of the methodology chosen to sample and analyze the compounds of interest. This evaluation would be used to characterize the effectiveness of the methodology and correct for any inefficiency in the chosen technique.

Under subpart G of part 63, EPA is proposing standards to limit emissions of halides and halogens from incineration or control of halogenated organic vent streams at SOCMI facilities. Method 26 currently prescribes only measurement of hydrogen chloride emissions with sampling at a constant rate. The revisions being proposed today will expand the method's applicability to other hydrogen halides and halogens. The addition of Method 26A will provide an alternative to the revised Method 26 and will allow for isokinetic sampling of gas streams that are saturated with moisture.

Method 26 was developed for and is currently applicable to determining hydrogen chloride emissions from municipal waste combustors. Methods similar to Method 26 and Method 26A were developed for the measurement of hydrogen chloride (HCl) and chlorine (Cl_2) in emissions from hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste (56 FR 32728, July 17, 1991). Application of a method to a source with emission characteristics "similar" to those under which it was validated is addressed in section 12 of proposed Method 301, "Field Validation of Emission Concentrations from Stationary Sources" (56 FR 27370, June 13, 1991). The Agency has compared the characteristics of incinerated SOCMI process vent gases to emissions from municipal waste combustors and hazardous waste incinerators and plans to waive the Method 301 validation requirements for applying the methodology developed for waste incinerators to the incinerated SOCMI vent gases. The Agency believes that the sample gas matrices from incinerated SOCMI process vent gases are similar to those of waste incinerators and do not contain interferences that would warrant a validation of the methodology for measurement of HCl or (Cl_2) emissions from this source. This initial opinion is based, in part, on the relative insensitivity of the methodology to interferences expected in the SOCMI exhaust gas streams.

The revisions to Method 26 as well as Method 26A also extend the applicability of the methodology in Method 26 and the HCl/(Cl_2) methods developed for hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste to measurement of hydrogen bromide (HBr), hydrogen fluoride (HF), and bromine (Br_2). The applicability extension is based on limited data and the expected similar behavior of these compounds to HCl and (Cl_2) in regard to sampling and analytical procedures.

Because of its extreme reactivity, fluorine (F_2) should not be present in the sample matrix and is not addressed by the methods. Iodine (I_2) and hydrogen iodide (HI) are also not covered by the methods because few, if any, of the organics controlled by the SOCMI process vent incinerators will contain the iodine ion and, additionally, there are no known data to support measurement of I_2 and HI with this technique.

The Agency intends to assess the methods further, prior to promulgation, through laboratory and field evaluations. A study is underway concerning the potential negative bias in Method 26A at HCl levels below 20 ppm; specifically, the study is determining the need for replacing certain glass components in the sampling train with Teflon® to reduce surface adsorption effects. Another study is planned to address sample stability, particularly in regard to the species created by hydrolysis of the halogens in the alkaline solution in the sampling train. Finally, a laboratory and field evaluation of Method 26A will be conducted to assess the bias and precision of the method for the target analytes. To assist in its assessment, the Agency solicits comments on available information on the proposed methodology. Specifically, the Agency solicits comments with supporting data to better define the compounds present in the gas matrices which may, for the hydrogen halides and halogens specified in the methods, (1) be analytical interferences, (2) interfere with their quantitative collection in the impinger solutions, or (3) affect sample stability. Comments should be addressed to the Air Docket listed in the ADDRESSES section.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rule in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A)).

C. Office of Management and Budget Review

1. Paperwork Reduction Act.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. Executive Order 12291 Review.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. The proposal of these test methods is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Synthetic organic chemical manufacturing.

Dated: October 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 60, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A [Amended]

2. In appendix A, Method 18 is proposed to be amended by adding paragraph (c) to section 3 and by revising sections 7.4.4.1 and 7.4.4.5 and by adding section 7.6 to read as follows:

Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography

* * * * *

3. Precision and Accuracy

* * * * *

(c) Recovery. After developing an appropriate sampling and analytical system for the pollutants of interest, conduct the procedure in section 7.6. Submit the data and results of the recovery procedure with the reporting of results under section 7.5.

* * * * *

7.4.4 * * *

7.4.4.1 Determine the recovery efficiency of the pollutants of interest according to section 7.6.

7.4.4.2 * * *

7.4.4.3 * * *

7.4.4.4 * * *

7.4.4.5 Calculations. All calculations can be performed according to the respective NIOSH method. Correct all sample volumes to standard conditions. If a sample dilution system has been used, multiply the results by the appropriate dilution ratio. Correct all results according to the procedure in section 7.6.3.

* * * * *

7. * * *

* * * * *

7.6 Recovery Study. After conducting the presurvey and identifying all of the pollutants of interest, assemble (in the laboratory or on-site) the sampling and analytical system to be used in conducting the source test.

7.6.1 Obtain a certified gaseous standard (or prepare a gaseous standard as described in section 6.2.1 or 6.2.2) containing all of the pollutants of interest present in the source gas stream at the level of the standard (±10 percent). If complying with an efficiency standard (determining the percent efficiency of a control device), the concentration of each target pollutant in the standard shall be at the level of the outlet to the control device (±10 percent).

7.6.2 If an integrated bag sampling system is to be used at the source (section 7.1), follow the procedure specified in section 7.6.2.1. If a direct interface (section 7.2) or a dilution interface (section 7.3) sampling and analysis procedure is to be used at the source, follow the procedure in section 7.6.2.2. If an adsorption tube procedure (section 7.4) is to be used at the source, follow the procedure in section 7.6.2.3.

7.6.2.1 Set up the sampling system including any conditioning system and one of three sampling bags exactly as it would be assembled at the source. Attach the gaseous standard at the inlet to the sampling system (i.e., the tip of the sampling probe). Sample the gaseous standard exactly as you would extract a sample from the source. Analyze the standard sample as the source sample would be analyzed. Repeat this procedure three times (sample and analyze three separate bag samples).

7.6.2.2 Set up the on-line GC, sample line, and any sample conditioning systems exactly as they would be at the source (if using a dilution interface sampling system, set up the heat trace and dilution system as they would be at the source). Attach the gaseous standard at the inlet to the sampling system (i.e., the tip of the sampling probe). Sample the gaseous standard exactly as you would extract a sample from the gas stream of the source. Analyze the standard as the source gas would be analyzed. Repeat this procedure three times (sample and analyze three standard samples).

7.6.2.3 Assemble the sampling system exactly as it would be set up at the source, using the same amounts and number of adsorption tubes as those to be used at the source. Attach the gaseous standard at the inlet to the sampling train (i.e., the tip of the sampling probe). Sample the standard at the flow rate and sampling times to be used at the source. Desorb and analyze the adsorbent tubes in the laboratory using the procedures to be applied to the source samples. Repeat this procedure three times.

7.6.3 Calculations. The relative standard deviation of the three results for each pollutant of interest shall be ≤10 percent. Calculate the theoretical concentration for each compound based on standard concentration, time sampled (if using adsorbent tubes or bags), and flow rate of the gas. Calculate the measured concentration of each compound based on the analytical results. Calculate fraction recovered by dividing measured concentration by theoretical concentration. The average fraction recovered (of the three runs) shall be ≥0.7 and ≤1.30 for each compound of interest. If average fraction recovered <0.7 or >1.30 for a particular compound, the sampling and analytical techniques are not acceptable for that compound. If the average fraction recovered is ≥0.7 and ≤1.30 for a compound, correct all of the results from the source test before submitting the data by dividing source concentration by the average fraction recovered for each compound.

* * * * *

3. It is proposed that Method 26 of 40 CFR part 60, appendix A be amended by revising the title; by revising sections 1.1, 1.2, 1.3, 1.5, 1.6, 2.1.3, the first sentence of 2.1.4, 2.1.5, 2.2.2, the heading of section 3.1.2, sections 3.1.3, 3.2.2, 3.2.3, 4.1.1, 4.2, 4.3, 4.4.2, 4.4.3, 5.2, 7.2, 7.3, 7.4; by revising Figure 26–1; and by adding references 4 and 5 to section 8 to read as follows:

Appendix A—Test Methods

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Midget Impinger Method

1. * * *

1.1 Applicability. This method is applicable for determining emissions of hydrogen halides (HX) [hydrogen chloride (HCl), hydrogen bromide (HBr), and hydrogen fluoride (HF)] and halogens (X_2) [chlorine (Cl_2) and bromine (Br_2)] from stationary sources. Sources, such as those controlled by wet scrubbers, that emit acid particulate matter must be sampled using Method 26A. [Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.]

1.2 Principle. An integrated sample is extracted from the source and passed through dilute sulfuric acid and dilute sodium hydroxide solutions which collect the gaseous hydrogen halides and halogens, respectively. The hydrogen halides are solubilized in the acidic solution and form chloride (Cl^-), bromide (Br^-), and fluoride (F^-) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton (H^+), the halide ion, and the hydrohalous acid (HClO or HBrO). The halide ions in the separate solutions are measured by ion chromatography (IC).

1.3 Interferences. Volatile materials, such as chlorine dioxide (ClO_2) and ammonium chloride (NH_4Cl), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and a hydrohalous acid upon dissolution in water. The use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution. High concentrations of nitrogen oxides (NO_x) may produce sufficient nitrate (NO_3^-) to interfere with measurements of very low Br^- levels.

* * * * *

1.5 Sample Stability. The collected Cl^- samples can be stored for up to 4 weeks.

1.6 Detection Limit. The analytical detection limit for Cl^- is 0.1 μg/ml. Detection limits for the other analytes should be similar.

* * * * *

2. * * *

2.1 * * *

BILLING CODE 1505-01-D

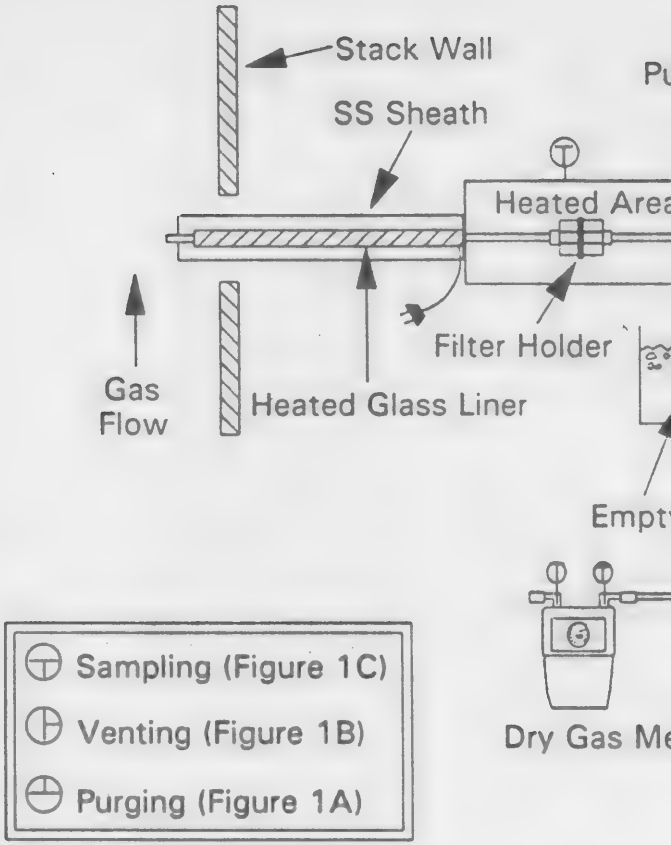

Figure 26-1

BILLING CODE 1505-01-C

. Sampling train.

2.1.3 Sample Impingers. Four 30-ml midget impingers with leak-free glass connectors. Silicone grease may be used, if necessary, to prevent leakage. For sampling at high moisture sources or for sampling times greater than one hour, an additional midget impinger with a shortened stem (such that the gas sample does not bubble through the collected condensate) should be used in front of the first impinger.

2.1.4 Drying Tube or Impinger. Tube or impinger (Mae West or midget design) filled with 6- to 16-mesh indicating type silica gel, or equivalent, to dry the gas sample and to protect the dry gas meter and pump. * * *

2.1.5 Filter. A 25- or 47-mm Teflon® mat, Pallflex® TX40H175 or equivalent. Locate in a glass, quartz, or Teflon® filter holder with a Teflon® or other inert filter support inside a filter box heated to 121 °C (250 °F). When the stack gas temperature exceeds 210 °C (410 °F) and the HCl concentration is greater than 20 ppm, a quartz-fiber may be used.

* * * * *

2.2 * * *

2.2.2 Storage Bottles. 100- or 250-ml, high-density polyethylene bottles with Teflon® screw cap liners to store impinger samples.

* * * * *

3. * * *

3.1 * * *

3.1.2 Acidic Absorbing Solution, 0.1 N Sulfuric Acid ($H_{22}SO_4$). * * *

3.1.3 Alkaline Absorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 100 ml of the alkaline absorbing solution for the second impinger pair, dissolve 0.40 g of solid NaOH in about 90 ml of water and adjust the final volume to 100 ml using additional water. Shake well to mix the solution.

3.2 * * *

3.2.2 Blank Solutions. Separate blank solutions of the absorbing reagents should be prepared for analysis with the field samples. Dilute 30 ml of each absorbing solution to 100 ml with water in separate volumetric flasks.

3.2.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110 °C for two or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact Cl^- concentration using Equation 26–1.

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44 \quad \text{Eq. 26–1}$$

In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26–2 and 26–3 to calculate the Br^- and F^- concentrations.

$$\mu g\ Br^-/ml = g\ of\ NaBr \times 10^3 \times 79.904/102.90 \quad \text{Eq. 26–2}$$

$$\mu g\ F^-/ml = g\ of\ NaF \times 10^3 \times 18.998/41.99 \quad \text{Eq. 26–3}$$

Alternately, solutions containing a nominal certified concentration of 1000 mg/L NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than one month.

* * * * *

4. * * *

4.1 * * *

4.1.1 Preparation of Collection Train. Prepare the sampling train as follows: Pour 15 ml of the acidic absorbing solution into each one of the first pair of impingers, and 15 ml of the alkaline absorbing solution into each one of the second pair of impingers. Connect the impingers in series with the knockout impinger first, if used, followed by the two impingers containing the acidic absorbing solution and the two impingers containing the alkaline absorbing solution. Place a fresh charge of silica gel, or equivalent, in the drying tube or impinger at the end of the impinger train.

* * * * *

4.2 Sample Recovery. Disconnect the impingers after sampling. Quantitatively transfer the contents of the acid impingers and the knockout impinger, if used, to a leak-free storage bottle. Add the water rinses of each of these impingers and connecting glassware to the storage bottle. Repeat this procedure for the alkaline impingers and connecting glassware using a separate storage bottle. The sample bottles should be sealed, shaken to mix, and labeled. Mark the fluid level.

4.3 Sample Preparation for Analysis. Note the liquid levels in the sample containers and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Quantitatively transfer the sample solutions to 100-ml volumetric flasks, and dilute to 100 ml with water.

4.4 * * *

4.4.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^-, Br^-, or F^- appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to section 5.2. Ensure adequate baseline separation of the analytes.

4.4.3 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks, quality control sample, and the field samples. Measure the areas or heights of the Cl^-, Br^-, and F^- peaks. Use the average response to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. The values from duplicate injections should agree within 5 percent of their mean for the analysis to be valid. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

* * * * *

5. * * *

5.2 Ion Chromatograph. To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N H_2SO_4 or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the appropriate stock solutions such that they are within the linear range of the field samples. Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest. Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis.

Determine the peak areas, or heights, for the standards and plot individual values versus halide ion concentrations in μg/ml. Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

* * * * *

7. * * *

7.2 Total μg HCl, HBr, or HF Per Sample.

$m_{HX}=KV_s(S_{X-}-B_{X-})$ Eq. 26–4

where:

B_{X-}=Analysis of reagent blank, μg halide ion (Cl^-, Br^-, F^-)/ml.

m_{HX}=Mass of HCl, HBr, or HF in sample, μg.

S_{X-}=Analysis of sample, μg halide ion (Cl^-, Br^-, F^-)/ml.

V_s=Volume of filtered and diluted sample, ml.

K_{HCl}=1.028 (μg HCl/μg-mole)/(μg Cl^-/μg-mole).

K_{HBr}=1.013 (μg HBr/μg-mole)/(μg Br^-/μg-mole).

K_{HF}=1.053 (μg HF/μg-mole)/(μg F^-/μg-mole).

7.3 Total μg Cl_2 or Br_2 Per Sample.

$m_{X2}=2\ V_s(S_{X-}-B_{X-})$ Eq. 26–5

where:

m_{X2}=Mass of Cl_2 or Br_2 in sample, μg.

7.4 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$C=K\ m_{HX,X2}/V_{m(std)}$ Eq. 26–6

where:

C=Concentration of hydrogen halide (HX) or halogen (X_2), dry basis, mg/dscm.

$V_{m(std)}$=Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

K=10^{-3} mg/μg.

8. * * *

4. Stern, D.A., B.M. Myatt, J.F. Lachowski, and K.T. McGregor. Speciation of Halogen and Hydrogen Halide Compounds in Gaseous Emissions. In: Incineration and Treatment of Hazardous Waste: Proceedings of the 9th Annual Research Symposium, Cincinnati, Ohio, May 2–4, 1983. Publication No.600/9–84–015. July 1984. Available from National Technical Information Service, Springfield, VA 22161 as PB84–234525.

5. Holm, R.D. and S.A. Barksdale. Analysis of Anions in Combustion Products. In: Ion Chromatographic Analysis of Environmental Pollutants. E. Sawicki, J.D. Mulik, and E. Wittgenstein (eds.). Ann Arbor, Michigan, Ann Arbor Science Publishers. 1978. pp. 99–110.

* * * * *

4. It is proposed that 40 CFR part 60 be amended by adding Method 26A to Appendix A as follows:

Appendix A—Test Methods

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Isokinetic Method

1. Applicability, Principle, Interferences, Precision, Bias, and Stability

1.1 Applicability. This method is applicable for determining emissions of hydrogen halides (HX) [hydrogen chloride (HCl), hydrogen bromide (HBr), and hydrogen fluoride (HF)] and halogens (X_2) [chlorine (Cl_2) and bromine (Br_2)] from stationary sources. This method collects the emission sample isokinetically and is therefore particularly suited for sampling at sources, such as those controlled by wet scrubbers, emitting acid particulate matter (e.g., hydrogen halides dissolved in water droplets). [Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.]

1.2 Principle. Gaseous and particulate pollutants are withdrawn isokinetically from the source and collected in an optional cyclone, on a filter, and in absorbing solutions. The cyclone collects any liquid droplets and is not necessary if the source emissions do not contain them; however, it is preferable to include the cyclone in the sampling train to protect the filter from any moisture present. The filter collects other particulate matter including halide salts. Acidic and alkaline absorbing solutions collect the gaseous hydrogen halides and halogens, respectively. Following sampling of emissions containing liquid droplets, any halides/halogens dissolved in the liquid in the cyclone and on the filter are vaporized to gas and collected in the impingers by pulling conditioned ambient air through the sampling train. The hydrogen halides are solubilized in the acidic solution and form chloride (Cl^-), bromide (Br^-), and fluoride (F^-) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton (H^+), the halide ion, and the hypohalous acid (HClO or HBrO). The halide ions in the separate solutions are measured by ion chromatography (IC). If desired, the particulate matter recovered from the filter and the probe is analyzed following the procedures in Method 5.

1.3 Interferences. Volatile materials, such as chlorine dioxide (ClO_2) and ammonium chloride (NH_4Cl), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and an hypohalous acid upon dissolution in water. The use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution. High concentrations of nitrogen oxides (NO_x) may produce sufficient nitrate (NO_3^-) to interfere with measurements of very low Br^- levels.

1.4 Precision and Bias. The method has a measurable negative bias below 20 ppm HCl. Similar bias for the other hydrogen halides is possible.

1.5 Sample Stability. The collected Cl^- samples can be stored for up to 4 weeks for analysis for HCl and Cl_2.

1.6 Detection Limit. The in-stack detection limit for HCl is approximately 0.02 μg per liter of stack gas; the analytical detection limit for HCl is 0.1 μg/ml. Detection limits for the other analytes should be similar.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 26A–1; the apparatus is similar to the Method 5 train where noted as follows:

2.1.1 Probe Nozzle. Borosilicate or quartz glass; constructed and calibrated according to Method 5, sections 2.1.1 and 5.1, and coupled to the probe liner using a Teflon® union; a stainless steel nut is recommended for this union. When the stack temperature exceeds 210 °C (410 °F), a one-piece glass nozzle/liner assembly must be used.

2.1.2 Probe Liner. Same as Method 5, section 2.1.2, except metal liners shall not be used. Water-cooling of the stainless steel sheath is recommended at temperatures exceeding 500 °C.

2.1.3 Pitot Tube, Differential Pressure Gauge, Filter Heating System, Metering System, Barometer, Gas Density Determination Equipment. Same as Method 5, sections 2.1.3, 2.1.4, 2.1.6, 2.1.8, 2.1.9, and 2.1.10.

2.1.4 Cyclone (Optional). Glass. Use of the cyclone is required only when the sample gas stream is saturated with moisture; however, the cyclone is recommended to protect the filler from any moisture droplets present.

2.1.5 Filter Holder. Borosilicate glass, with a Teflon® filter support and a sealing gasket. The sealing gasket shall be constructed of Teflon® or equivalent materials. The holder design shall provide a positive seal against leakage at any point along the filter circumference. The holder shall

be attached immediately to the outlet of the cyclone.

2.1.6 Impinger Train. The following system shall be used to determine the stack gas moisture content and to collect the hydrogen halides and halogens: five or six impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first impinger shown in Figure 26A–1 (knockout or condensate impinger) is optional and is recommended as a water knockout trap for use under high moisture conditions. If used, this impinger should be constructed as described below for the alkaline impingers, but with a shortened stem, and should contain 50 ml of 0.1 N H_2SO_4. The following two impingers (acid impingers which each contain 100 ml of 0.1 N H_2SO_4) shall be of the Greenburg-Smith design with the standard tip (Method 5, section 2.1.7). The next two impingers (alkaline impingers which each contain 100 ml of 0.1 N NaOH) and the last impinger (containing silica gel) shall be of the modified Greenburg-Smith design (Method 5, section 2.1.7). The condensate, acid, and alkaline impingers shall contain known quantities of the appropriate absorbing reagents. The last impinger shall contain a known weight of silica gel or equivalent desiccant.

2.1.7 Ambient Air Conditioning Tube (Optional). Tube tightly packed with approximately 150 g of fresh 8 to 20 mesh sodium hydroxide-coated silica, or equivalent, (Ascarite II® has been found suitable) to dry and remove acid gases from the ambient air used to remove moisture from the filter and cyclone, when the cyclone is used. The inlet and outlet ends of the tube should be packed with at least 1-cm thickness of glass wool or filter material suitable to prevent escape of fines. Fit one end with flexible tubing, etc. to allow connection to probe nozzle following the test run.

2.2 Sample Recovery. The following items are needed:

2.2.1 Probe-Liner and Probe-Nozzle Brushes, Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder or Balance, and Rubber Policeman. Same as Method 5, sections 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, and 2.2.7.

2.2.2 Plastic Storage Containers. Screw-cap polypropylene or polyethylene containers to store silica gel. High-density polyethylene bottles with Teflon screw cap liners to store impinger reagents, 1-liter.

2.2.3 Funnels. Glass or high-density polyethylene, to aid in sample recovery.

2.3 Analysis. For analysis, the following equipment is needed:

2.3.1 Volumetric Flasks. Class A, various sizes.

2.3.2 Volumetric Pipettes. Class A, assortment, to dilute samples to calibration range of the ion chromatograph (IC).

2.3.3 Ion Chromatograph. Suppressed or nonsuppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, a strip chart recorder, and peak heights may be used.

3. Reagents

Unless otherwise indicated, all reagents must conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). When such specifications are not available, the best available grade shall be used.

3.1 Sampling.

3.1.1 Water. Deionized, distilled water that conforms to American Society of Testing and Materials (ASTM) Specification D1193–77, Type 3.

3.1.2 Acidic Absorbing Solution, 0.1 N Sulfuric Acid (H_2SO_4). To prepare 1 L, slowly add 2.80 ml of concentrated H_2SO_4 to about 900 ml of water while stirring, and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

3.1.3 Alkaline Absorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 1 L, dissolve 4.00 g of solid NaOH in about 900 ml of water and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

3.1.4 Filter. Quartz-fiber or Teflon® mat (e.g., Pallflex® TX40HI45) filter.

3.1.5 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, sections 3.1.2, 3.1.4, and 3.1.5, respectively.

3.2 Sample Recovery.

3.2.1 Water. Same as Section 3.1.1.

3.2.2 Acetone. Same as Method 5, Section 3.2.

3.3 Sample Analysis.

3.3.1 Water. Same as section 3.1.1.

3.3.2 Reagent Blanks. A separate blank solution of each absorbing reagent should be prepared for analysis with the field samples. Dilute 200 ml of each absorbing solution (250 ml of the acidic absorbing solution, if a condensate impinger is used) to the same final volume as the field samples using the blank sample of rinse water. If a particulate determination is conducted, collect a blank sample of acetone.

3.3.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110 °C for 2 or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact Cl^- concentration using Equation 26A–1.

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44 \quad \text{Eq. 26A–1}$$

In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26A–2 and 26A–3 to calculate the Br^- and F^- concentrations.

$$\mu g\ Br^-/ml = g\ of\ NaBr \times 10^3 \times 79.904/102.90 \quad \text{Eq. 26A–2}$$

$$\mu g\ F^-/ml = g\ of\ NaF \times 10^3 \times 18.998/41.99 \quad \text{Eq. 26A–3}$$

Alternately, solutions containing a nominal certified concentration of 1000 mg/L NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than 1 month.

3.3.4 Chromatographic Eluent. Effective eluents for nonsuppressed ion chromatography using a resin- or silica-based weak ion exchange column are a 4 mM potassium hydrogen phthalate solution, adjusted to a pH of 4.0 using a saturated sodium borate solution, and a mM 4-hydroxy benzoate solution, adjusted to a pH of 8.6 using 1 N sodium hydroxide. An effective eluent for suppressed ion chromatography is a solution containing 3 mM sodium bicarbonate and 2.4 mM sodium carbonate. Other dilute solutions buffered to a similar pH that contain no ions interfering with the chromatographic analysis may be used. If, when using suppressed ion chromatography, the "water dip" resulting from sample injection is interfering with the chlorine peak, use a 2 mM sodium hydroxide/2.4 mM sodium bicarbonate eluent.

4. Procedure

Because of the complexity of this method, testers and analysts should be trained and experienced with the procedures to ensure reliable results.

4.1 Sampling.

4.1.1 Pretest Preparation. Follow the general procedure given in Method 5,

section 4.1.1, except the filter need only be desiccated and weighed if a particulate determination will be conducted.

4.1.2 Preliminary Determinations. Same as Method 5, section 4.1.2.

4.1.3 Preparation of Sampling Train. Follow the general procedure given in Method 5, section 4.1.3, except for the following variations:

Add 50 ml of 0.1 N H_2SO_4 to the condensate impinger, if used. Place 100 ml of 0.1 N H_2SO_4 in each of the next two impingers. Place 100 ml of 0.1 N NaOH in each of the following two impingers. Finally, transfer approximately 200–300 g of preweighed silica gel from its container to the last impinger. Set up the train as in Figure 26A–1. When used, the optional cyclone is inserted between the probe liner and filter holder and located in the heated filter box.

4.1.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, sections 4.4.1 (Pretest Leak-Check), 4.1.4.2 (Leak-Checks During the Sample Run), and 4.1.4.3 (Post-Test Leak-Check).

4.1.5 Train Operation. Follow the general procedure given in Method 5, section 4.1.5. Maintain a temperature around the filter and (cyclone, if used) of 120±14 °C (248±25 °F). For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–2. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N H_2SO_4, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. After the impinger is reinstalled in the train, conduct a leak-check as described in Method 5, section 4.1.4.2.

4.1.6 Post-Test Moisture Removal (Optional). When a cyclone is included in the sampling train, perform the following procedure. Upon completion of the test run, connect the ambient air conditioning tube at the probe inlet and operate the train with the filter heating system at 120±14 °C (248±25 °F) at a low flow rate (e.g., ΔH=1 in. H_2O) to vaporize any liquid and hydrogen halides in the cyclone or on the filter and pull them through the train into the impingers. After 30 minutes, turn off the flow, remove the conditioning tube, and examine the cyclone and filter for any visible moisture. If moisture is visible, repeat this step for 15 minutes.

4.2 Sample Recovery. Allow the probe to cool. When the probe can be handled safely, wipe off all the external surfaces of the tip of the probe nozzle and place a cap loosely over the tip. Do not cap the probe tip tightly while the sampling train is cooling down because this will create a vacuum in the filter holder, drawing water from the impingers into the holder. Before moving the sampling train to the cleanup site, remove the probe, wipe off any silicone grease, and cap the open outlet of the impinger train, being careful not to lose any condensate that might be present. Wipe off any silicone grease and cap the filter or cyclone inlet. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger and the filter holder, disconnect it at the filter holder and let any condensed water drain into the first impinger. Wipe off any silicone grease and cap the filter holder outlet and the impinger inlet. Ground glass stoppers, plastic caps, serum caps, Teflon^R tape, Parafilm^R, or aluminum foil may be used to close these openings. Transfer the probe and filter/impinger assembly to the cleanup area. This area should be clean and protected from the weather to minimize sample contamination or loss. Inspect the train prior to and during disassembly and note any abnormal conditions. Treat samples as follows:

4.2.1 Container No. 1 (Optional; Filter Catch for Particulate Determination). Same as Method 5, section 4.2, Container No. 1.

4.2.2 Container No. 2 (Optional; Front-Half Rinse for Particulate Determination). Same as Method 5, section 4.2, Container No. 2.

4.2.3 Container No. 3 (Knockout and Acid Impinger Catch for Moisture and Hydrogen Halide Determination). Disconnect the impingers. Measure the liquid in the acid and knockout impingers to ±1 ml by using a graduated cylinder or by weighing it to ±0.5 g by using a balance. Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Quantitatively transfer this liquid to a leak-free sample storage container. Rinse these impingers and connecting glassware (and tubing, if used) with water and add these rinses to the storage container. Seal the container, shake to mix, and label. The fluid level should be marked so that if any sample is lost during transport, a correction proportional to the lost volume can be applied. Retain rinse water and acidic absorbing solution blanks and analyze with the samples.

4.2.4 Container No. 4 (Alkaline Impinger Catch for Halogen and Moisture Determination). Measure and record the liquid in the alkaline impingers as described in section 4.2.3. Quantitatively transfer this liquid to a leak-free sample storage container. Rinse these two impingers and connecting glassware with water and add these rinses to the container. Seal the container, shake to mix, and label; mark the fluid level. Retain alkaline absorbing solution blank and analyze with the samples.

4.2.5 Container No. 5 (Silica Gel for Moisture Determination). Same as Method 5, section 4.2, Container No. 3.

4.2.6 Container Nos. 6 through 9 (Reagent Blanks). Save portions of the absorbing reagents (0.1 N H_2SO_4 and 0.1 N NaOH) equivalent to the amount used in the sampling train; dilute to the approximate volume of the corresponding samples using rinse water directly from the wash bottle being used. Also, save a portion of the rinse water alone and a portion of the acetone equivalent to the amount used to rinse the front half of the sampling train. Place each in a separate, prelabeled sample container.

4.2.7 Prior to shipment, recheck all sample containers to ensure that the caps are well-secured. Seal the lids of all containers around the circumference with Teflon^R tape. Ship all liquid samples upright and all particulate filters with the particulate catch facing upward.

4.3 Sample Preparation and Analysis. Note the liquid levels in the sample containers and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

4.3.1 Container Nos. 1 and 2 and Acetone Blank (Optional; Particulate Determination). Same as Method 5, section 4.3.

4.3.2 Container No. 5. Same as Method 5, section 4.3 for silica gel.

4.3.3 Container Nos. 3 and 4 and Absorbing Solution and Water Blanks. Quantitatively transfer each sample to a volumetric flask or graduated cylinder and dilute with water to a final volume within 50 ml of the largest sample.

4.3.3.1 The IC conditions will depend upon analytical column type and whether suppressed or nonsuppressed IC is used. Prior to calibration and sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^-, Br^-, or F^- appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present. Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to section 5.2. Ensure adequate baseline separation of the analytes.

4.3.3.2 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks and the field samples. Measure the areas or heights of the Cl^-, Br^-, and F^- peaks. Use the average response to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. If the values from duplicate injections are not within 5 percent of their mean, the duplicate injection shall be repeated and all four values used to determine the average response. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

4.4 Audit Sample Analysis. Audit samples must be analyzed subject to availability.

5. Calibration

Maintain a laboratory log of all calibrations.

5.1 Probe Nozzle, Pitot Tube, Dry Gas Metering System, Probe Heater, Temperature Gauges, Leak-Check of Metering System, and Barometer. Same as Method 5, sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, and 5.7, respectively.

5.2 Ion Chromatograph. To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N H_2SO_4 or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the three stock solutions such that they are within the linear range of the field samples. Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest. Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis. Determine the peak areas, or height, of the standards and plot individual values versus halide ion concentrations in µg/ml. Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

6. Quality Control

Same as Method 5, Section 4.4.

7. Quality Assurance

7.1 Applicability. When the method is used to demonstrate compliance with a regulation, a set of two audit samples shall be analyzed.

7.2 Audit Procedure. The available audit samples are chloride solutions. Concurrently analyze the two audit samples and a set of compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation. The same analyst, analytical reagents, and analytical system shall be used both for compliance samples and the Environmental Protection Agency (EPA) audit samples.

7.3 Audit Sample Availability. Audit samples will be supplied only to enforcement agencies for compliance tests. Audit samples may be obtained by writing the Source Test Audit Coordinator (MD–77B), Quality Assurance Division, Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Laboratory, Research Triangle Park, NC 27711 or by calling the Source Test Audit Coordinator (STAC) at (919) 541–7834. The request for the audit samples should be made at least 30 days prior to the scheduled compliance sample analysis.

7.4 Audit Results. Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions. Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. (NOTE: Acceptability of results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total µg HCl/sample to the responsible enforcement agency.) The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report. Failure to meet the 10 percent specification may require retests until the audit problems are resolved.

8. Calculations

Retain at least one extra decimal figure beyond those contained in the available data in intermediate calculations, and round off only the final answer appropriately.

8.1 Nomenclature. Same as Method 5, section 6.1. In addition:

B_{x-}=Analysis of reagent blank, µg halide ion 0(Cl^-, Br^-, F^-)/ml.

C=Concentration of hydrogen halide (HX) or halogen (X_2), dry basis, mg/dscm.

m_{HX}=Mass of HCl, HBr, or HF in sample, µg.

m_{X2}=Mass of C12 or Br2 in sample, µg.

S_{x-}=Analysis of sample, µg halide ion (Cl^-, Br^-, F^-)/ml.

V_s=Volume of filtered and diluted sample, ml.

8.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 5–2 of Method 5).

8.3 Dry Gas Volume. Calculate $V_{m(std)}$ and adjust for leakage, if necessary, using the equation in section 6.3 of Method 5.

8.4 Volume of Water Vapor and Moisture Content. Calculate the volume of water vapor $V_{w(std)}$ and moisture content B_{ws} from the data obtained in this method (Figure 5–2 of Method 5); use Equations 5–2 and 5–3 of Method 5.

8.5 Isokinetic Variation and Acceptable Results. Use Method 5, sections 6.11 and 6.12.

8.6 Acetone Blank Concentration, Acetone Wash Blank Residue Weight, Particulate Weight, and Particulate Concentration. For particulate determination.

8.7 Total µg HCl, HBr, or HF Per Sample.

$$m_{HX}=K\,V_s\,(S_{X^-}-B_{X-}) \qquad \text{Eq. 26A–4}$$

where:

K_{HCl}=1.028 (µg HCl/µg-mole)/(µg Cl^-/µg-mole).

K_{HBr}=1.013 (µg HBr/µg-mole)/(µg Br^-/µg-mole).

K_{HF}=1.053 (µg HF/µg-mole)/(µg F^-/µg-mole).

8.8 Total µg Cl_2 or Br_2 Per Sample.

$$m_{X2}=2\,V_s\,(S_{X^-}-B_{X-}) \qquad \text{Eq. 26A–5}$$

8.9 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$$4C=K\,m_{HX}.X_2/V_{m(std)} \qquad \text{Eq. 26A–6}$$

where:

$K=10^{-3}$ mg/µg

8.10 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in sections 5.2 and 5.3 of Method 2.

9. Bibliography

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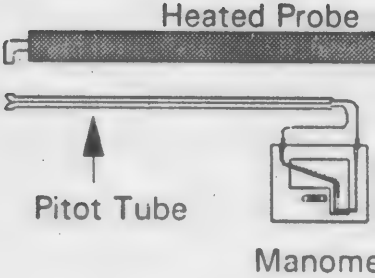

Figure 26

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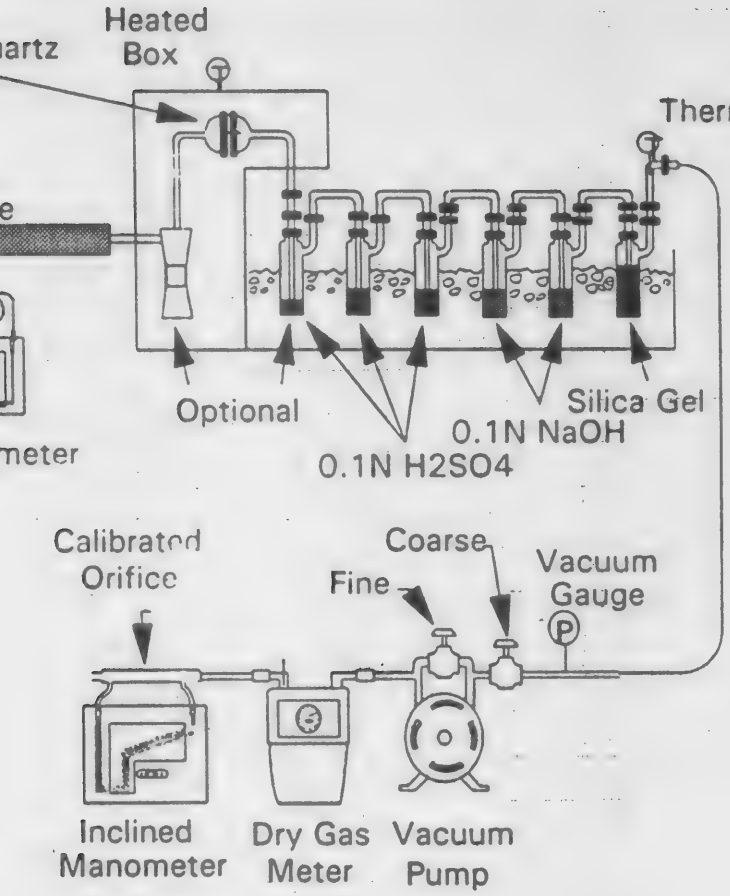

6A-1. Sampling train.

federal register

Friday
February 26, 1993

Part II

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives: Standards for Reformulated Gasoline; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-4556-7]

RIN 2060-AD27

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes revisions to the simple model and the contents of a complex model to be used in the certification of reformulated gasoline, and associated procedures to assure compliance with the reformulated gasoline and antidumping programs. This notice additionally proposes "Phase II" reformulated gasoline emission performance standards which will take effect in the year 2000, as prescribed by section 211(k)(3) and authorized by section 211(c) of the Clean Air Act (CAA). The detailed proposed regulations described herein may be obtained from Public Docket No. A-92-12 or from the contacts listed in the **ADDRESSES** section.

DATES: The comment period will close April 27, 1993. EPA will issue a subsequent notice indicating when and where the public hearing will be held.

ADDRESSES: Comments may be submitted to U.S. EPA (RDSD-12) 2565 Plymouth Road, Ann Arbor, MI 48105. Materials relevant to this NPRM are contained in Public Docket No. A-92-12, located at room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Additional materials relevant to earlier related proposals are contained in Public Docket No. A-91-02 at the same location. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials. EPA will provide a copy of the proposed regulations for this NPRM upon request.

FOR FURTHER INFORMATION CONTACT:

Michael Sklar (complex model), U.S. EPA (RDSD-12), 2565 Plymouth Road, Ann Arbor, MI 48105, Fuel Studies and Standards Branch, Telephone: (313) 741-7817.

Christine Brunner (Phase II performance standards), U.S. EPA (RDSD-12), 2565 Plymouth Road, Ann Arbor, MI 48105, Fuel Studies and Standards Branch, Telephone: (313) 668-4287.

George Lawrence (enforcement and certification), U.S. EPA (6406J), 401 M Street, Washington, DC 20460, Eastern Field Office I, Telephone: (202) 233-9307.

To Request Copies of This Notice or the Proposed Regulations Contact: Marie Tolonen, U.S. EPA (RDSD-12), 2565 Plymouth Road, Ann Arbor, MI 48105, Fuel Studies and Standards Branch, Telephone: (313) 668-4295.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of these proposed regulations is to improve air quality by requiring that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds, as prescribed by section 211(k) of the Clean Air Act (CAA or the Act). This section of the Act mandates that reformulated gasoline be sold in the nine largest metropolitan areas with the most severe summertime ozone levels and other ozone nonattainment areas that opt into the program. It also prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990, to ensure that refiners do not "dump" into conventional gasoline what they can no longer use in reformulated gasoline.

Shortly after passage of the Clean Air Act Amendments of 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing both the reformulated gasoline and related anti-dumping programs. These parties included representatives of the oil and automobile industries, vehicle owners, state air pollution control officials, oxygenate suppliers, gasoline retailers, environmental organizations, and citizens' groups. During the regulatory negotiation, EPA agreed to propose a two-step approach to reformulated gasoline. The first step would take effect in 1995 and utilize a "simple model" to certify that a gasoline meets applicable emission reduction standards.

Under the second step, EPA would propose a "complex model" to supplant the simple model for certifying compliance with these standards, which would take effect on March 1, 1997 or 4 years after it is promulgated, whichever is later. EPA also agreed to propose the more stringent emission performance standards that the Act provides to take effect in the year 2000.

Regulations to implement this first step were initially proposed on July 9, 1991 in a notice of proposed rulemaking (NPRM) (56 FR 13416). Today's notice includes approaches different from the previously proposed regulations related to the simple model as well as to the anti-dumping provisions. This proposal is supplemental to the previous proposals and is not intended to withdraw from consideration the various elements previously proposed, but provides additional proposals for public review and comment. (The reader may refer to the NPRM and SNPRM mentioned above, the Draft Regulatory Impact Analysis (DRIA), and Public Docket Numbers A-91-02 and A-92-12 for a thorough description of the goals and regulatory development of the reformulated and anti-dumping programs and discussions of a number of associated technical issues.) In this notice, the Agency is also proposing the complex model and associated revised enforcement provisions, as well as the year 2000 performance standards.

In addition, EPA is proposing a range of NO_X performance standards under section 211(c) of the Act as a complement to the VOC and toxics performance standards proposed under section 211(k). In a recent report on the chemistry of tropospheric ozone formation, the National Academy of Sciences emphasized the importance of NO_X reductions in addressing this problem.

The remainder of this preamble is organized into the following sections:

II. Proposed Revisions to the Simple Model Proposal
III. Complex Model
IV. Vehicle Testing
V. Phase I Performance Standards Using the Complex Model
VI. Phase II Reformulated Gasoline Performance Standards
VII. Enforcement Provisions
VIII. Anti-Dumping Compliance and Enforcement Requirements for Conventional Gasoline
IX. Anti-Dumping Requirements for Conventional Gasoline
X. Environmental and Economic Impacts
XI. Public Participation
XII. Compliance With the Regulatory Flexibility Act
XIII. Statutory Authority
XIV. Administrative Designation and Regulatory Analysis
XV. Reporting and Recordkeeping Requirements

II. Proposed Revisions to the Simple Model Proposal

A. Background

1. SNPRM

As noted above, The Agency's SNPRM reflected the agreement reached in the regulatory negotiation that had been conducted to develop reformulated gasoline regulations under section 211(k) (as well as oxygenated fuels guidelines under section 211(m)).

Added by the 1990 Clean Air Act Amendments, section 211(k)(1) directs EPA to issue regulations that, beginning in 1995, require the greatest reduction in emissions of ozone-forming [VOCs] and toxic pollutants achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any non air-quality and other air-quality related health and environmental impacts and energy requirements. Section 211(k)(3) specifies that the performance standards for 1995 to 2000 must require emission reductions, measured on a mass basis, equal to that achieved by a specified formula fuel or 15 percent of baseline emissions (the emissions of 1990 model year vehicles operated on a specified baseline gasoline), whichever is more stringent. For 2000 and beyond, the standard must be no less than the formula fuel or a 25 percent reduction from baseline emissions, whichever is more stringent. EPA can adjust this standard taking into account feasibility and cost, but in no case can it be less than 20 percent. Taken together, sections 211(k)(1) and 211(k)(3) call for the Agency to set standards that achieve the most stringent level of control, taking into account the specified factors, but no less stringent than those described by section 211(k)(3).

For purposes of today's notice, it is useful to review the background of the SNPRM's proposed VOC and toxic standards. Given the short amount of time provided by the statute for promulgation of the reformulated gasoline standards, the regulatory negotiation committee agreed on the twostep approach noted above. The first step would utilize then-available information to construct a model that would determine a fuel's VOC and toxic emissions. Because the available information for quantifying the effects of fuel parameters on VOC emissions was limited in large part to the effects of Reid Vapor Pressure (RVP) and oxygen content, the so-called "simple model" took those fuel parameters into account in predicting a fuel's VOC emissions for purposes of compliance under the VOC performance standard. At the same time, it was understood that certain other fuel parameters affected a fuel's emissions, and that directionally higher levels of these other parameters were likely to increase VOC emissions. Until the effects of these parameters could be accurately quantified, the committee agreed that the average level of these parameters in each refiner's fuel should remain capped at 1990 levels.

The second step was intended to take advantage of data then being developed to characterize the emissions effects of other fuel parameters. That data would be used to construct a "complex model" that would better predict a specific fuel's emissions based on these parameters. The complex model would thus also provide refiners with more options for reducing those emissions by changing the levels of these parameters in their gasoline formulations.

The simple model would be available for at least the first two years of the program and would be replaced by the complex model four years after the complex model's promulgation. The Agency agreed to propose the four-year period to allow refiners lead-time in order to recoup investments made to comply with the simple model and to make any refinery changes necessary to comply with the standards under the complex model. However, under the agreement, the complex model could be used on a voluntary basis as soon as it was promulgated, so long as any fuel certified using the complex model achieved emission reductions as great as those it would have to achieve to be certified using the simple model.

In developing the proposed VOC standards, it became clear that the formula fuel specified by section 211(k)(3) did not yield emissions reductions greater than the statutory minimum of 15 percent. To achieve the statutory minimum under the simple model, the regulatory negotiation committee members agreed that a fuel's RVP (measure of volatility) could not be greater than 8.1 pounds per square inch (psi) and its oxygen content had to comply with the 2.0 weight percent requirement prescribed by section 211(k)(2)(B). The more volatile a fuel, the more VOCs it emits, mostly through evaporation. The more oxygen in the fuel the lower the exhaust VOC emissions (up to a maximum of 2.7 weight percent oxygen per the simple model).

Committee members considered the need for further emission reductions and the cost of obtaining them in deciding whether and to what extent VOC performance standards more stringent than the statutory minimum were achievable. For the reasons laid out in the SNPRM, EPA and the other committee members concluded that reformulated gasoline with 2.0 weight percent oxygen, 8.1 psi RVP in northern cities, and 7.2 psi RVP in southern cities represented the greatest emission reductions that could be achieved by reformulating gasoline, taking into account the specified factors.

The committee sought the more stringent VOC reduction requirement for the South in order to assure that southern nonattainment areas obtained emission reductions beyond what those cities would obtain from the volatility reduction requirements separately required by section 211(h). (Due to higher temperatures in the South, emissions from a gasoline with a specified RVP are greater in the South than in the North. Under section 211(h), the volatility limits for southern areas were set lower than those applicable in northern areas in order to achieve comparable per vehicle emissions levels in the two regions). As explained in the SNPRM, however, the additional cost of achieving the more stringent standard in the South would be significant and made it difficult to impose a more stringent standard in the North, as well. In effect, the committee decided to allocate the greatest reductions from the 8.7 RVP baseline gasoline that reformulating gasoline could reasonably achieve in such a way as to roughly equalize the actual emission benefits of the program between northern and southern nonattainment areas.

2. Ethanol Issues

Following the release of the SNPRM, supporters of ethanol, an agriculturally derived oxygenate added to gasoline in some parts of the country, again raised the concern that the simple model's RVP requirement would effectively preclude ethanol from the RFG market during the summer months (VOC control season). Ethanol, when added to gasoline in the amount needed to satisfy the oxygen content requirement of the Act raises the volatility of the resulting blend by about 1 psi. Consequently, for the ethanol to be blended with the RFG under the simple model, a blendstock gasoline with an RVP low enough to offset the increase resulting from adding ethanol would have to be obtained.

Ethanol representatives commented that obtaining such blendstocks would be both difficult and expensive, because "sub-RVP" blendstocks would be more costly to refine and because blendstock production would be controlled by petroleum refiners. Methyl tertiary butyl ether (MTBE), an oxygenate which does not boost a fuel's RVP, which is derived from natural gas and the petroleum product isobutylene and can readily be put through petroleum pipelines, was thought to be the oxygenate of choice for most refiners. Ethanol's representatives theorized that the oil industry would have a desire to use MTBE over ethanol and thus little incentive to make the sub-RVP blendstock necessary for ethanol blending. The ethanol industry contended that a reformulated gasoline program which they argued would effectively preclude ethanol was

contrary to Congress' intent that ethanol have a role in the program. They argued that the oxygen content requirement of section 211(k)(2) was motivated in large part by a desire to expand markets for ethanol. They noted the strong support afforded the RFG legislative initiative by Members of Congress from agricultural states. They also cited statements in the legislative history indicating some members' expectation that the RFG program would provide an increasing market for ethanol.

Ethanol representatives contended that the benefits of ethanol use justify its inclusion in the RFG program. Specifically, they explained that ethanol is currently made in the United States from domestically-grown grains, primarily corn, and thus represents an important domestic and renewable source of energy. They further explained that to the extent ethanol is used in place of imported petroleum products, it promotes the nation's energy independence and improves its balance of trade, and that ethanol use also strengthens the market for corn, consequently reducing the need for price supports. Moreover, as a biomass-based product, ethanol is potentially a renewable fuel to the extent the energy derived exceeds any fossil fuel energy consumed in producing the ethanol.

In view of ethanol's importance to the nation's energy security and agricultural economy, ethanol representatives urged that the simple model proposal be revised to allow ethanol to effectively participate in the RFG market. They suggested several possible revisions. For example, they argued that the 1 psi waiver granted to certain ethanol blends by section 211(h) of the CAA be applied to ethanol-blended RFG under section 211(k). They reasoned that since Congress recognized in the provision requiring nationwide reductions in fuel RVP that ethanol required such a waiver, ethanol should receive a similar waiver if the VOC performance standard for RFG sold in the smoggiest cities were defined in terms of a required reduction in RVP.

If the section 211(h) waiver were not available to RFG ethanol blends, the ethanol industry suggested that the VOC reduction requirement take into account that the variety of VOCs from gasoline differ in their ozone formation potential. While ethanol raises a fuel's volatility and thus its VOC emissions, they argued that the resulting VOCs are less ozone-forming than those that would otherwise occur. They urged that the 15 percent reduction requirement should thus be interpreted to require a 15 percent reduction in ozone-forming potential, not simply ozone-forming VOCs. Ethanol supporters suggested additional ways of encouraging or even requiring ethanol use in RFG. The Governors Ethanol Coalition, for instance, suggested that EPA require the RFG market to satisfy its oxygenate requirements through a minimum percentage of domestically produced renewable fuel.

3. October 1st Announcement

EPA, the Department of Agriculture, the Department of Energy and other parts of federal government engaged in an extensive dialogue with all interested groups to address the ethanol industry's concerns with the RFG program. In response to the ethanol industry's suggestion, the applicability of the section 211(h) waiver to the RFG program under 211(k) was closely considered. For the reasons set forth in a memorandum available in the docket, the Acting General Counsel of EPA determined that it did not apply.

Also explored was the ability to take reactivity into account in determining compliance with the requirement that "ozone-forming VOCs" be reduced by 15 percent. Section 211(k)(3), however, explicitly requires that reductions in ozone-forming VOCs be measured on a "mass basis." Although any reactivity benefits of emissions from ethanol blends, should they exist, could be taken into account in defining which VOCs are "ozone-forming," the statute does not appear to permit ozone-forming VOCs to be weighted on the basis of their ozone formation potential for purposes of determining compliance with the 15 percent reduction requirement.

Based on ethanol's importance to the nation's energy and agricultural policy, President Bush on October 1, 1992 announced a plan to allow ethanol to effectively compete in the RFG program, with the expectation that, with barriers removed, ethanol use would grow. This plan is based upon provisions of section 211(k)(1) allowing the Administrator to take into consideration cost, energy requirements, and other specified factors in setting RFG performance standards. The most significant part of this plan called for EPA to "establish rules for reformulated gasoline in all northern cities that will have the effect of granting a one-pound waiver for the first 30 percent market share of ethanol blends, while achieving environmental benefits comparable to those provided for in EPA's proposed rule and regulatory negotiation." The environmental benefits of the proposed RFG program would be maintained by offsetting any increase in volatility of RFG containing ethanol with reductions in the volatility of the rest of the reformulated gasoline pool.

Also pursuant of the plan, EPA is proposing to propose to establish rules allowing governors of southern states to extend the provisions made for ethanol in northern RFG-covered cities to covered southern cities as well. Other aspects of the plan include the establishment of an RVP trading program, the unrestricted optional early use of the complex model and oxygenate neutral NO_X and toxics performance standards. Through today's notice the Administrator proposes these as well as a variety of other provisions relevant to his determination of section 211(k) factors.

B. Reid Vapor Pressure Allowance

1. Overview

EPA proposes that the RVP performance standard under the simple model provisions of the SNPRM and VOC performance requirements under the complex model be based upon the extent of use of renewable oxygenates such as ethanol. For northern areas under the simple model, EPA proposes that the RVP performance standard as proposed in the SNPRM of 8.1 psi (8.0 psi under the averaging provisions of the SNPRM) be reduced to 7.8 psi (7.7 psi under averaging) when no renewable oxygenates are used in reformulated gasoline, but be permitted to increase to 8.1 psi (8.0 psi under averaging) through the use of renewable oxygenates in 30% of the reformulated gasoline produced. For example, taking advantage of the proposal's averaging provisions, this would allow ethanol to be splash blended into 30% of reformulated gasoline and have a 1.0 psi greater RVP than other reformulated gasoline blends while still maintaining the in-use volatility and, thus, comparable environmental benefits proposed in the SNPRM. EPA is also proposing to permit a governor of a southern state to have applied in that state's ozone nonattainment areas provisions similar to those described above for northern areas. Specifically, under the simple model, EPA proposes that the 7.2 psi RVP standard proposed in the SNPRM for southern areas be reduced to 7.0 psi, but that refiners may meet an RVP standard of up to 7.2 psi if they use ethanol or other renewable oxygenates in up to 20 percent of the market covered in those areas. In addition, the Agency proposes a similar approach to standard setting under the complex model.

It should be noted that this program in no way limits the ability of a refiner to use ethanol or any other renewable

oxygenate in its gasoline to only 30 percent of its production (20 percent in the South). A refiner may blend as much ethanol into its gasoline as it desires, provided it meets its RVP (VOC) performance standards. It should also be noted that the ability of refiners to average RVP performance under the provisions of the SNPRM is not changed as a result of this program. RVP averaging can still be used to meet a refiner's RVP (VOC) performance requirements. In fact, as discussed below, EPA is proposing to expand the RVP averaging provisions of the SNPRM to include RVP trading as well.

In order to provide greater flexibility for the use of renewable oxygenates, EPA proposes that refiners be permitted to either blend the renewable oxygenate themselves to raise their performance standard, or obtain commitments from other refiners to do so. This flexibility in connection with the RVP trading provisions will allow greater renewable oxygenate use by the refiners who can benefit from their use, and allow its use in those areas where it is most economical to do so.

Today's action does not mandate the use of ethanol. Taking into account the statutorily specified factors, EPA is proposing these provisions for ethanol on the theory that allowing ethanol to effectively participate in the RFG market is important to the nation's energy security. While EPA is continuing to gather the relevant data and perform the requisite analyses, it appears that the use of renewable oxygenates such as ethanol as a motor vehicle fuel may reduce the nation's dependence on foreign oil, improve our balance of trade with other nations, and enhance our energy security.[1] At 2.7 wt% oxygen, use of ethanol (or ethanol in the form of ETBE) in 30 percent of RFG) would displace 2.3 percent of the volume of reformulated gasoline with ethanol. This is the equivalent of 360 million gallons of ethanol used (gasoline displaced) during the summer months alone in the areas currently covered by the reformulated gasoline program (including those areas that have already opted in), and could rise to as much as 510 million gallons if all eligible areas opted into the program. In addition to energy related benefits, the use of oxygenates made from renewable sources provides the potential for reducing emissions which contribute to global warming.

As explained above, the statute prescribes for the near term a minimum 15 percent reduction in VOCs, and in the SNPRM EPA proposed RVP and oxygen requirements that it believed achieved this requirement. Under today's proposal, the simple model RVP standards for refiners or importers that use 30% renewable oxygenate is 8.1 psi, if compliance is met on a per gallon basis. Both the renewable and nonrenewable blends produced by those refiners or importers would have to meet this per gallon standard. If compliance is met on average, however, the RVP standard would be 8.0 psi. This could be met, for example, by two-thirds of a refiner's or importer's gasoline meeting 7.7 psi (nonrenewable blends) and one-third meeting 8.7 psi (renewable blend such as ethanol splash blended into a 7.7 psi blendstock).

The effect of today's proposal on the cost of reformulated gasoline is expected to be small. The cost of reducing the RVP of gasoline by 0.3 psi in northern (VOC control region 2 as defined in the SNPRM) areas to offset the allowance for splash blended ethanol in 30% of the fuel is approximately 0.3 to 0.5 cents per gallon. However, the overall cost of the RVP performance allowance of 0.3 psi for the use of ethanol is expected to be less than 0.3 cents per gallon since ethanol is likely to be less costly than MTBE per gallon of reformulated gasoline produced.[2]

In addition, the cost of ethanol may decrease beginning in 1995 as a result of the proposed provisions. Under a program like that set forth in the SNPRM, ethanol would be expected to capture a sizeable portion of the RFG and oxygenated fuels markets during the winter months. (The oxygenated fuels program established by section 211(m) requires that gasoline sold in many carbon monoxide nonattainment areas include 2.7 percent oxygen during the winter months, beginning in 1992.) However, since the market during the summer was potentially small, ethanol production facilities could not operate year-round at a steady production level without storing vast quantities of ethanol during the summer for use during the winter. To the extent ethanol was also used during the summer months, more steady production could be achieved, with reduced capital expenditures for storage and peak production equipment. This would likely result in a reduction in the cost of producing ethanol.

Year-round and increased use of ethanol may also increase the incentives to develop an established infrastructure for ethanol distribution and use, making it even more feasible and cost effective. In addition, expanded use of renewable oxygenates may encourage further research and development associated with their production and use, which could further reduce their cost and expand their market both as blends with gasoline and separately as alternative fuels. Expanded use of renewable oxygenates would further result in economic growth not only in the ethanol industry, but also in agriculture and related industries. Finally, since the consumption of grain to produce ethanol may raise the prices farmers receive for their crops, additional ethanol use may reduce the amount the government must pay in agricultural price supports.

While the cost per gallon of reformulated gasoline of the RVP adjustment for the use of renewable oxygenates is small, the incentive per gallon of ethanol is substantial. An economic incentive for renewable oxygenate containing blends such as ethanol blends of 0.3 cents per gallon adds roughly 13.7 cents per gallon to the value of ethanol (assuming a base requirement of 2.7 wt% oxygen as described in section 4).[3]

In sum, section 211(k)(1) requires that gasoline be reformulated to achieve the greatest reductions in VOC emissions considering cost, energy, and the other specified factors, but not less than a 15% reduction during Phase I of the program and 25% (20%) during Phase II of the program. In determining how these statutory requirements can be met, EPA must balance the cost of RVP reductions in non-ethanol blended gasoline and the extent to which energy or other considerations warrant that the volatility associated with ethanol use be offset. Today, EPA is proposing that the volatility associated with a potential ethanol market share as high as 30 percent be offset through reductions for nonrenewable oxygenate blended gasoline such that the reformulated gasoline market achieve overall reductions meeting the minimum 15% reduction requirement. EPA requests comment on whether this proposal represents the proper balance. EPA

[1] The Final Report of the Interagency Commission on Alternative Fuels written for DOE and published in September, 1992 estimates that the displacement of crude oil with all oxygenate use under the reformulated gasoline and oxygenated fuels provisions of the CAA could reach roughly 200,000 barrels per day. In a private conversation on 1/8/92, Margaret Singh of Argonne National Laboratory, one of the authors of the Interagency Commission report, stated that roughly 10 percent of the crude oil displacement in that analysis was due to ethanol alone (this estimate does not take into account any changes which may result from today's proposal).

[2] "Evaluation of the Use of Ethanol and MTBE in Reformulated Gasoline," by Sobotka & Co., Inc., for USEPA, September 30, 1992.

[3] The derivation of the value of the incentive is shown in Section VIII of the DRIA.

believes that, in addition to the factors described previously concerning the energy and other benefits of renewable oxygenate use, the following are relevant to the issue: The cost to reduce the RVP of nonrenewable oxygenate blends below the previously proposed levels; the leadtime available for such reductions; and the market share ethanol and other renewable oxygenates could expect absent any such provisions. The expected market share absent these provisions is hard to predict, and at best 30% would allow ethanol and other renewable oxygenates to effectively participate in the reformulated gasoline program, including the opportunity to expand that participation beyond what would otherwise be possible.

2. Performance Standard Setting Process

The RVP performance standards proposed today are intended to provide the same level of RVP and comparable environmental control as would be achieved by the SNPRM, while allowing ethanol and other renewable oxygenates to effectively participate in the reformulated gasoline program. This can be accomplished by adjusting the RVP performance standard with the use of renewable oxygenates while preventing the standard from going any higher than that proposed in the SNPRM. As such, EPA proposes to establish a performance standard for RFG not containing renewable oxygenates that is more stringent than that which was proposed in the SNPRM. EPA further proposes that if refiners commit to the use of renewable oxygenates in their fuel or purchase commitments from other refiners for the use of renewable oxygenates (if that proves more cost effective) their RVP performance standard would be relaxed accordingly (up to 8.1 psi). Finally, a refiner's performance standard could be relaxed even further through a process by which EPA provides RVP performance standard adjustments based on the refiner's commitment to use renewable oxygenate that other refiners might have used to take advantage of a less stringent RVP (VOC) performance standard, but chose not to. This RVP (and VOC) performance standard setting process is described in the following sections and shown in figure II.1.

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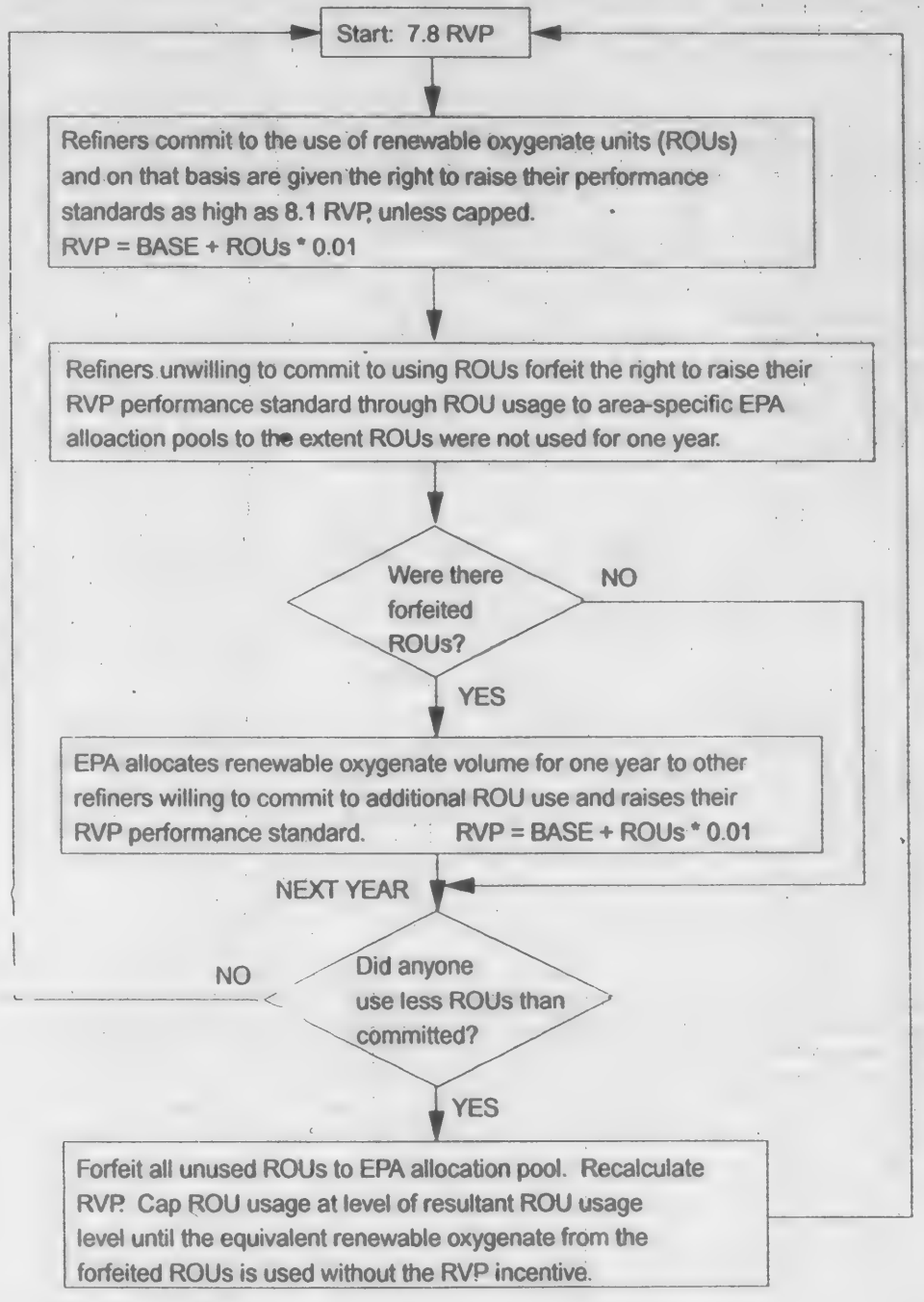
Figure II.1
RVP PERFORMANCE STANDARD SETTING PROCESS


Start: 7.8 RVP
Refiners commit to the use of renewable oxygenate units (ROUs) and on that basis are given the right to raise their performance standards as high as 8.1 RVP, unless capped.
RVP = BASE + ROUs * 0.01
Refiners unwilling to commit to using ROUs forfeit the right to raise their RVP performance standard through ROU usage to area-specific EPA alloaction pools to the extent ROUs were not used for one year.
Were there forfeited ROUs?
NO
YES
EPA allocates renewable oxygenate volume for one year to other refiners willing to commit to additional ROU use and raises their RVP performance standard. RVP = BASE + ROUs * 0.01
NEXT YEAR
Did anyone use less ROUs than committed?
NO
YES
Forfeit all unused ROUs to EPA allocation pool. Recalculate RVP. Cap ROU usage at level of resultant ROU usage level until the equivalent renewable oxygenate from the forfeited ROUs is used without the RVP incentive.

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a. Southern Performance Standards. The proposed approach taken in the North would not be required for southern areas covered by the RFG program. There are several reasons for this distinction. First, most of the RFG areas are in the North, so that removing barriers to ethanol use in the North will have a larger impact than removing these barriers in the South on the policies associated with ethanol use. Second, production of grain feedstocks and ethanol production are concentrated in the North. The higher tax benefits these northern areas offer ethanol together with lower transportation costs account for ethanol's greater use in the North. For these same reasons, EPA expects that the potential for growth in ethanol use is expected to be greater in the North. Third, the lower RVP standards applicable under the simple model in the South are likely to make additional RVP reductions to offset volatility increases associated with ethanol use more expensive for southern RFG areas. In sum, in striking the balance between achievable RVP reductions and the policy benefits associated with ethanol, EPA has reason to believe that for the South generally, the RVP costs may be higher and the resulting ethanol policy benefits may be lower.

Thus, striking the balance somewhat differently for southern areas, President Bush's announcement did provide, nonetheless, that a modified version of the northern approach be available to governors of southern states to have applied at their discretion. A governor who believes that ethanol has a potentially strong market in his or her state could request that this modified approach, explained in more detail below, be applied in the state's RFG-covered areas. As summarized above while EPA believes that ethanol participation in southern RFG areas would advance the same policy concerns as ethanol participation in northern areas, EPA is not certain that ethanol would participate sufficiently even if the barriers are removed to justify the higher costs of offsetting the volatility increase in southern areas. However, southern governors may be in a good position to judge on a case-by-case basis the likely participation of ethanol in the market and the cost of removing the barriers.

The modification of the northern approach for optional application in the South is as follows. EPA is proposing that the RVP standard for RFG not containing renewable oxygenates be reduced from 7.2 psi to 7.0 psi (6.9 psi under the averaging provisions of the SNPRM). The 0.2 psi reduction would permit 20 percent of the RFG market in an area to be splash-blended with ethanol without raising the average RVP of the RFG in the area.

EPA further proposes as one option that the effective date for inclusion of a southern covered area be the beginning of the first VOC control season three years following receipt of the governor's letter requesting application of this approach in his or her state. EPA believes three years is the appropriate amount of time to provide adequate lead-time for refiners to prepare to make the necessary additional RVP reductions, and requests comment on the validity of this belief.

While having the program automatically take effect three years after the request from the governor is a relatively straightforward approach, it does raise serious questions about whether section 211(k) authorizes a state to determine which federal standard applies in its area. At the same time, EPA is concerned whether receipt or non-receipt of a request from a governor is an adequate basis to support a different performance standard in that area.

In light of these concerns, EPA is proposing a second option whereby the ethanol provisions described above would be implemented in a southern area through a rulemaking conducted subsequent to receipt of a request from the Governor. Upon receipt of any such request from a governor, EPA would promptly prepare a notice proposing extension of the ethanol-related provisions to the area or areas covered by the request. This would allow for full exploration of all the relevant issues, and would avoid the legal concerns mentioned above. This option is similar to the approach taken in the federal RVP regulations under section 211 (c) and (h), where RVP standards were set on a national basis with allowance for subsequent rulemaking to fine tune the regulations for specific localities. EPA requests comment on the relative merits of these two options.

The energy related benefits of renewable oxygenates are not unique to the use of the simple model. Under the SNPRM, refiners will have the option of using the complex model in the first years of the program when the simple model is also available. After a specified period of time following the complex model's promulgation, only the complex model will be available for certification. In keeping with the proposal under the simple model, EPA proposes that the VOC performance standard stringency under the complex model be increased by the equivalent of 0.3 psi RVP. For Phase I of the reformulated gasoline program EPA proposes to determine the VOC equivalent of 0.3 psi RVP using as a baseline a fuel meeting the performance standards of the simple model (8.0 RVP, 2.1 wt% oxygen, 0.95 volume percent benzene, 26.3 percent aromatics, and CAA baseline values for all other fuel parameters), and under Phase II of the reformulated gasoline program one baseline fuel consistent with the VOC performance standard described in section VI of this notice (for purposes here, 2.0% oxygen, 105 ppm sulfur, 6.9 RVP, 202°F T50, 316°F T90, 23.0% aromatics, 6.5% olefins, and 1.0% benzene). As calculated from the complex model, EPA thus proposes that the Phase I and Phase II VOC performance standards be increased by 7.1 and 2.8 percentage points, respectively, in northern areas. If any southern areas are included in the program, the Phase I and Phase II VOC performance standards would be increased by 5.9, and 2.0 percentage points, respectively (for Phase I, the equivalent of 0.2 RVP determined using a baseline fuel of 7.1 RVP, 2.1 wt% oxygen, 0.95 volume percent benzene, 26.2 percent aromatics, and CAA baseline values for all other fuel parameters and, for Phase II, the equivalent of 0.2 RVP using as a baseline fuel a fuel with 2.0 wt% oxygen, 143 ppm sulfur, 6.5 RVP, 202°F T50, 316°F T90, 23.0% aromatics, 6.5% olefins, and 1.0% benzene). EPA requests comment on this methodology for setting the performance standards under the complex model, on the fuel assumptions used, on whether and to what extent the methodology unfairly disadvantages any refiner relative to another, and on whether there are any other methodologies or fuel assumptions which might be more appropriate.

b. Performance Standard Adjustment Through Commitments for Renewable Oxygenate Use. EPA's proposed RVP and VOC standards are based on its estimate of the greatest reductions the market as a whole can achieve, taking into account the statutory factors. However, the ability and desire of refiners to take full advantage of today's proposed standards varies from refiner to refiner. To ensure that the policy objectives related to this proposal are fully served, it is important that the market be permitted to work as efficiently as possible. EPA is therefore proposing that a system of commitments be created to allow the greatest flexibility for the use of ethanol and other renewable oxygenates consistent with the applicable performance standards.

In fulfilling their commitments, refiners could either blend renewable oxygenate themselves during the forthcoming VOC control season or, if meeting the VOC standards on average, also purchase commitments from other refiners. As long as refiners meet their RVP (VOC) performance standards in each area covered by the RFG program, the use of renewable oxygenate could easily be shifted from a refiner serving one area to a refiner serving another area where it is more economically advantageous to do so (based on state tax subsidies, distribution costs, etc.). Whether or not a refiner chose to fulfill its commitment through its own use of renewable oxygenate or through contracting for its use with another refiner, however, the refiner would nevertheless be liable for its commitment. Since various refiners produce vastly different amounts of gasoline, in order to maintain the same level of renewable oxygenate use under this program, trading of renewable oxygenates from one refiner to another must be performed on a volume basis.

Under the simple model, refiners could elect to meet an RVP performance standard as high as 8.1 psi (8.0 under averaging) in the North and 7.2 psi (7.0 under averaging) in the South in proportion to their commitment to use renewable oxygenate in 30 percent and 20 percent of their fuel, respectively. Under the complex model refiners could lower the otherwise applicable VOC performance standard by as much as 7.1 percentage points in the North and 5.9 in the South under Phase I of the reformulated gasoline program, and 2.8 percentage points in the North and 2.0 percentage points in the South under Phase II, through the use of renewable oxygenates in 30 and 20 percent of their fuel, respectively. It is entirely up to each refiner to decide what amount of renewable oxygenate to use and, thus, which performance standard would be applicable to it. Refiners could utilize as much renewable oxygenates in producing their reformulated gasoline as they desire, but the ability to adjust the applicable performance standard in proportion to the amount used would be limited to 30 percent of their production in the North and 20 percent in the South.

In order to provide refiners with the necessary flexibility to blend renewable oxygenates, EPA proposes to raise the maximum RVP allowed under the averaging provisions of the SNPRM to 8.7 psi for renewable oxygenate blends in the North and 7.9 in the South. Similarly, the minimum VOC performance standard under the complex model is proposed to be relaxed by 21.2 percentage points in the North and 24.6 percentage points in the South below the averaging standard under Phase I of the reformulated gasoline program. Under Phase II, EPA proposes that the minimum performance level be set at 8.5 and 8.3 percentage points in the North and South, respectively, below the performance standard described in section VI (taking into account a 1.5% increase in the standard under averaging). These levels are sufficient to provide a 1.0 psi margin for splash blending ethanol into 30 percent of reformulated gasoline downstream of the refiner. EPA proposes, however, that for reformulated gasoline not containing renewable oxygenates the maximum RVP remain at the already proposed level for the simple model of 8.3 RVP in the North and 7.4 in the South, and that the minimum VOC performance under the complex model remain at the levels proposed later in today's notice.

The performance standard adjustment for blending renewable oxygenates has value only if the RVP or other parameters of gasoline are adjusted. Since these are determined by the refiner, EPA proposes that the refiners continue to be the party responsible for meeting the RVP performance standard, which is now a function of the amount of renewable oxygenate used. Since this is fully consistent with the provisions of the SNPRM, changes to the enforcement provisions proposed in the SNPRM are minimized. EPA considered various other options which would also place requirements on terminal operators (ethanol blenders), but considered such options as being too restrictive and burdensome.

At the same time, unless refiners chose to comply with the per gallon performance standards, some blends (e.g., those splash blended with ethanol) would be likely to have an RVP that is higher than that of other blends by as much as 1.0 psi. (Under the per gallon standards, all of a refiner's fuel must meet its per gallon standard (e.g., 8.1 RVP if renewable oxygenate is used in 30 percent of its fuel) including any ethanol splash blends.) Therefore, in order to ensure that the RVP (and VOC) standard is met in each area covered by the reformulated gasoline program, it would be essential for the refiner to track and control the fraction of fuel with a higher RVP which is distributed to each area. Similarly, it would be essential for refiners to maintain a constant fraction of fuel with a higher RVP (lower VOC performance) over the course of the VOC control season. Otherwise, there could be temporal increases and decreases in the average emission performance of in-use fuels. As under the averaging provisions of the SNPRM, should temporal increases occur, the refiners run the risk of in-use compliance survey violations and thus, a more stringent performance standard the following year.

c. Performance Standard Adjustment Through EPA Allocation of Uncommitted Renewable Oxygenate Use. Some refiners may decide not to use renewable oxygenates and forego the opportunity to meet a less stringent RVP (VOC) performance standard. So that other refiners might take advantage of that opportunity and thereby further advance the policy goals of today's notice, EPA proposes that a refiner's opportunity to elect a less stringent RVP (VOC) performance standard be forfeited for the following ozone control season if it does not commit to the use of renewable oxygenates (by themselves or through the purchase of commitments from other refiners). EPA would then adjust the RVP performance standard of other refiners in exchange for their commitment to use the amount of renewable oxygenate which had been left uncommitted. For example, a refiner which commits to use renewable oxygenate in 60 percent of its fuel and receives the associated RVP performance standard adjustment could raise its average RVP performance standard in the North under the simple model from 8.0 to 8.3 psi.

This allocation system would also provide the means of effectively combining offsetting fuels in slates for the purpose of certifying them as RFG. Section 211(k)(4) permits gasoline to be certified as RFG as part of a "slate" of fuels that on average meet RFG requirements. While the proposed system of allocating RVP performance standard incentives would result in one refiner's fuel having an average RVP above the minimum 8.1 psi standard, by effectively combining in a slate that refiner's fuel with another refiner's fuel having an average RVP sufficiently below the standard, both refiner's fuels could still be certified as reformulated gasoline.

In order to permit EPA to adjust the RVP (VOC) performance standards, information on reformulated gasoline and renewable oxygenate use must be made available on an area-specific basis. If RVP performance standard adjustments for renewable oxygenate use were forfeited by a refiner in one covered area and subsequently allocated to refiners serving another covered area, greater environmental control would be achieved in one area and less in another. To avoid such an outcome, EPA proposes that by November 1 prior

to each ozone control season each refiner (and importer) report to EPA its commitment to use renewable oxygenates (and in what form), the amount of renewable oxygenate other refiners have committed to use for it, the amount of renewable oxygenate it has committed to use for other refiners, the amount of renewable oxygenate use eligible for making performance standard adjustments which is not committed to be used in each area covered by the reformulated gasoline program, its total reformulated gasoline production which was distributed for use in each covered area for the previous year, and the VOC performance characteristics (RVP under the simple model, all fuel parameters that affects VOC under the complex model) of the fuel which it distributes for use in each covered area. If and only if a refiner chooses to meet the VOC performance standards on a per gallon basis, commits to the use of a minimum of 30 percent of renewable oxygenate in the North and 20 percent in the South (if applicable), and is not committing to use renewable oxygenates for any other refiner, would its reporting requirements be simplified. In such a case the refiner would be required to report only its commitment to use at minimum 30 percent, and the volume of reformulated gasoline produced and renewable oxygenate used each year nationwide. By January 1 prior to each ozone control season, any uncommitted RVP (VOC) performance standard adjustments would be provided at no cost to other refiners for use in the same covered area for their commitment to use additional renewable oxygenate, and their performance standard would be adjusted accordingly. EPA proposes to allocate these adjustments among the refiners wishing to use them in the covered area where the adjustments are forfeited prorated based on the volume of reformulated gasoline produced by the various refiners requesting additional adjustments, and beginning with the category of refiners who fulfilled their commitment to use renewable oxygenates in previous years. The final RVP performance standard applicable for these refiners for the coming season would then be recalculated based upon the total amount of renewable oxygenate committed to be used.

EPA's adjustment of RVP (VOC) performance standards, as proposed, would be specific to each area covered by the reformulated gasoline program in order to maintain each area's environmental benefits from the reformulated gasoline program. As such it would require that refiners track their fuel from the point of production to the point of its ultimate use and report to EPA the amount of reformulated gasoline and renewable oxygenates distributed for consumption in each area (except as described above under certain conditions for per gallon compliance). EPA recognizes that such a requirement changes current industry operating practices and as such may impose additional costs. However, EPA is unaware of any alternatives which would provide comparable environmental neutrality. EPA requests comment on any alternative means by which the environmental neutrality of the program can be maintained while minimizing the cost and burden on refiners. EPA also requests comment on the ability of the in-use compliance surveys to be revised to provide adequate certainty that the full environmental control is achieved in each area without requiring refiners to track their fuel.

Despite the precautions described above, EPA is still seeking design improvements to fully assure that the program proposed today preserves the environmental control that would be achieved under the program proposed in the SNPRM. The program described above does not fully protect environmental neutrality if changes occur in the amount of fuel distributed to a given city by various refiners over time. Since the standards adjustment process is based on fuel volumes for the previous year, increases in the performance standard granted to some refiners following EPA adjustments would only be only offset if the refiners forfeiting RVP performance standard adjustments distribute the same or greater volume of reformulated gasoline to a given area as the year before. It is not until the following year that the adjustment would be made to offset this disparity. Despite this concern, EPA does not expect that there will be significant increases in RVP (decreases in VOC performance) in-use since decreases are just as likely as increases and not all refiners that opted to forfeit the performance standard adjustments would be expected to dramatically reduce the amount of fuel they distributed to a given area in the same year. Nevertheless, EPA requests comment on the this issue and on any means by which the environmental neutrality of the program can be more fully ensured.

If during the course of the ensuing VOC control season a refiner uses less renewable oxygenates than it had committed to EPA, no enforcement action would be taken as long as that refiner achieves an RVP or VOC performance standard commensurate with its actual renewable oxygenate use. However, if a refiner uses less renewable oxygenates than it has committed to use, EPA requests comment on what remedy would be appropriate. One possible remedy would be that the refiner forfeit the ability to raise its performance standard through renewable oxygenate use in the future (to the extent the commitment was not reached). EPA would make these RVP (VOC) performance standard adjustments available to other refiners willing to commit to use the corresponding amount of renewable oxygenate as described above. If such a forfeiting refiner wanted to raise its performance standard through renewable oxygenate use in the future, it could do so only if unallocated RVP (VOC) performance standard adjustments were still available for the covered area(s) in question. Such refiners would have their RVP (VOC) performance standard adjusted only after all refiners who fulfilled their commitments the previous year have received any desired adjustments.

EPA is concerned that the performance standard adjustment process described above does not grant refiners desiring to use additional renewable oxygenate adequate certainty of the availability of additional RVP (VOC) performance standard adjustments to fully take advantage of them. Furthermore, EPA is concerned that the refiners described in the previous paragraph who forfeited their opportunity to take advantage of RVP (VOC) performance standard adjustments for future years would be limited to receiving year to year adjustments from EPA if any are available and would never have any certainty of using any performance standard adjustments. As a result, EPA is also considering an approach whereby performance standard adjustments which are either given to EPA for subsequent distribution be permanent (instead of year to year) and whereby adjustments distributed by EPA would be permanent. Under such an approach, refiners would have the necessary certainty of being able to utilize the performance standard adjustments and be permitted to make refinery changes in accordance with such performance standard adjustments. Such an approach, however, prevents the year-to-year adjustments in reformulated gasoline volume necessary to ensure that any loss in environmental neutrality described above is limited to only one year. Another approach might

be to maintain the year to year allocation but allow refiners who fell short of their commitments in previous years to regain their original opportunity to use renewable oxygenates for RVP (VOC) performance standard adjustments by making up their earlier shortfall without any RVP (VOC) adjustment. EPA requests comments on the above approaches, on the need for an allocation program given its potential limitations, and on any other approaches that would provide refiners with the necessary certainty while still preserving the environmental neutrality of the program.

3. RVP Trading Program

Based on the performance standard adjustment process described above, if a refiner wishes to blend more than 30% of its production with renewable oxygenate, it would still be required to meet an 8.1 RVP standard. With regard to ethanol, this would require producing an ever lower RVP gasoline blendstock. In order to provide greater flexibility to refiners desiring to blend additional renewable oxygenates, EPA proposes to establish an RVP credit trading program (in addition to the averaging program proposed in the SNPRM) whereby refiners could obtain RVP credits from other refiners in lieu of reducing the RVP of their fuel. Under this program a refiner in Chicago could commit to use renewable oxygenate on behalf of a refiner in New York and then obtain RVP credits (from other refiners distributing fuel in Chicago) sufficient to compensate for any increase in RVP caused by increasing its use of renewable oxygenates. For the program to remain environmentally neutral the RVP credits could only be traded within a given area covered by the reformulated gasoline program. Otherwise, one area would have an average in-use RVP of less than 8.1 RVP, while the other area would have an average RVP of greater than 8.1 RVP. Such an RVP trading program could be conducted totally separate from any exchange in commitments for renewable oxygenate use or in conjunction with it. An example of the latter would be the sale of renewable oxygenate usage commitments and the purchase of RVP credits by a refiner wishing to use more than 30% renewable oxygenates and vice versa by a refiner wishing to use less than 30% renewable oxygenates. The former could potentially adjust its average RVP standard to as high as 8.7, while the average RVP standard of the latter refiner would be lower than 8.0. The fuels being marketed by both refiners would have to be in the same area, as mentioned above.

Furthermore, if the program is to be environmentally neutral, RVP credits must be traded based on the relative volume of reformulated gasoline produced at any given RVP. Since RVP trading is a means by which refiners can choose to meet their RVP performance standard and is not used to determine the performance standard, EPA proposes that RVP trading be permitted to take place throughout the course of the control period and as such be based on the actual gallons of reformulated gasoline produced. EPA proposes that to the extent refiners take advantage of RVP trading, they be required to report to EPA at the end of the ozone control season the average RVP of the reformulated gasoline they produced and the number of RVP credits traded to and received from other refiners for each of the reformulated gasoline areas. EPA does not believe that the added flexibility resulting from a trading program allows for a more stringent performance standard, but requests comment on the Agency's legal authority it implement RVP trading absent a tighter performance standard for those refiners who trade. A more stringent performance standard was proposed in the SNPRM in connection with averaging, and this is merely an extension of that program. Furthermore, this trading program is intended to provide greater flexibility to refiners for the purpose of making it easier to blend renewable oxygenates. If the performance standard were made more stringent, it could eliminate any incentive for blending renewable oxygenates provided by a trading program.

Since there is no RVP performance standard under the complex model, the RVP trading program described above cannot be used directly. However, the same motivation exists under the complex model as under the simple model to provide a trading program. Thus, under the complex model EPA proposes that refiners be permitted to trade VOC performance. EPA requests comment on this provision.

As discussed above in regard to EPA's allocation process for performance standard adjustments with renewable oxygenate use, EPA is concerned that the requirement that refiners track and report to EPA the volume of reformulated gasoline and its RVP (VOC performance) on a covered area specific basis may represent a significant additional burden. In the interest of minimizing the cost and burden on refiners of the reformulated gasoline program, EPA would prefer to avoid, if possible, requiring refiners to track their fuel from the refinery to its ultimate use. However, to ensure the environmental neutrality of the RVP (VOC) trading program knowledge of the actual distribution to each area is needed. EPA requests comment on any methods other than tracking of fuel by which the environmental neutrality of the program can be ensured in all covered areas and on whether the cost of tracking would be greater than any economic incentive created by the flexibility of the trading program.

4. Definition of Renewable Oxygenate Use

While the performance standards described above are adjustable based upon the amount of renewable oxygenates used in the reformulated gasoline produced, some constraints need to be placed on what constitutes the use of renewable oxygenates if both the environmental and other policy benefits of today's proposal are to be achieved. EPA proposes that renewable oxygenate be defined for the purposes of this program as those oxygenates that are derived from renewable resources such as agricultural products and waste products such as sewage sludge or waste cellulose and does not include oxygenates produced from non-renewable resources such as petroleum, natural gas, coal, or peat. Furthermore, since some oxygenates such as ethers are currently made from both renewable and non-renewable resources, EPA proposes that only the portion of oxygenates derived from renewable resources be considered as renewable oxygenate. At the present time, the only oxygenate EPA is aware of that is produced in significant quantities that meets the definition of renewable oxygenate is ethanol. However, the definition is not meant to be restricted to ethanol, and is intended to encompass numerous other oxygenates, particularly the ethanol portion of ethers such as ETBE and ETAE which in the future may be produced in significant quantities. EPA further proposes that the use of renewable oxygenates to meet the 30 percent market share described above for northern areas and 20 percent for southern areas be based upon an assumed base oxygen content in the reformulated gasoline of 2.7 wt%. A 30 percent market share would, thus, represent 0.81 wt% oxygen in the form of renewable oxygenates in a refiner's reformulated gasoline production in the North, and 0.54 wt% oxygen in the South. In order to allow the greatest degree of flexibility for refiners, EPA proposes that the use of any renewable oxygenate in any concentration be prorated on the basis of weight percent

oxygen for credit toward the 0.81 wt% oxygen base.

The reformulated gasoline provisions require only 2.0 wt% oxygen in reformulated gasoline, but a base oxygen content of 2.7 wt% would better advance the energy related policies of today's proposal, and is still consistent with the maximum oxygen content for which no NO_X emission increase is assumed under the simple model in section D below (as well as under both the negotiated agreement and SNPRM). Going beyond 2.7 wt% to as high as 3.5 wt% would provide a disincentive for the use of renewable oxygenates other than ethanol since they are currently limited to a maximum of 2.7 wt% and, thus, would be required to be used in more than 30 percent of the market to achieve the same level of renewable oxygenate use. Furthermore, setting a base oxygen content greater than 2.7 wt% oxygen would require the use of the complex model pursuant to the provisions of section D. This would represent a disincentive for certain refiners to use renewable oxygenates and, thus could potentially result in less renewable oxygenate use than setting the baseline at 2.7 wt%. EPA invites comment on setting the baseline oxygenate content at 2.7 wt% and on what level would best ensure that the energy related goals of today's proposal are achieved in a manner consistent with section 211(k) of the CAA.

If oxygenates are used that are derived from both renewable and nonrenewable resources, EPA proposes as one option that such oxygenates be prorated in direct proportion to the amount of their oxygen content derived from renewable resources (e.g., ETBE derived from ethanol which is produced from biomass would achieve the same credit as the amount of ethanol used to make it). Not all renewable oxygenates, however, are identical with respect to their environmental benefits. One significant difference between oxygenates is their potential to cause vapor pressure increases when mixed with other fuels in the distribution system and vehicle fuel tanks, a phenomenon referred to as commingling. ETBE does not exhibit a commingling effect, nor does it produce the dramatic rise in blend vapor pressure above 100°F that ethanol does. As a result, from an environmental standpoint, the use of ethanol in the form of ETBE is preferable to direct ethanol blending. The value added per gallon of ethanol from the RVP incentive proposed in this section would be roughly 13.7 cents, assuming an RVP control cost of one cent per RVP-gallon. This economic incentive would be constant regardless of the concentration of ethanol added or the form (splash blended ethanol or ETBE) since it is based on RVP. However, independent from today's proposal there is an inherent added incentive for blending ethanol at 3.5 wt% instead of 2.7 wt% oxygen since the former causes less of an RVP increase per gallon of ethanol used (ethanol blended to both 2.7 wt% and 3.5 wt% oxygen cause roughly a 1.0 psi RVP increase). Because of this inherent incentive EPA expects most ethanol blends would be at 3.5 wt% oxygen through the use of the complex model and oxygen credit trading. As a result, ETBE would always be forced to compete with ethanol at 3.5 wt% oxygen instead of ethanol at 2.7 wt% oxygen where ETBE would be at less of a disadvantage. In order to offset this disadvantage, EPA is also requesting comment on an option that renewable oxygenates such as ETBE that do not exhibit commingling effects be given the same credit at 2.0 wt% oxygen that is given to ethanol (or other renewable oxygenates which exhibit commingling effects) at 2.7 wt% oxygen. ETBE use in 30 percent of the market would, under this option, represent 0.60 wt% oxygen in the form of renewable oxygenates in a refiner's reformulated gasoline production. This approach would provide ETBE blends with an additional incentive of roughly the same magnitude as exists for blending ethanol at 3.5 wt% oxygen relative to 2.7 wt% oxygen.

Commingling itself is an issue which is not unique to this proposal. It was not addressed in the context of the SNPRM but, nevertheless, represents an environmental impact whenever oxygenates such as ethanol which exhibit commingling effects are blended into gasoline. Today's proposal is not expected to dramatically change the magnitude of any commingling effects inherent under the SNPRM. While today's proposal may increase the market share of ethanol, it also contains incentives for ETBE and other ethers which do not exhibit commingling effects. As such there could be no increase or even a decrease in the amount of ethanol used to meet the reformulated gasoline program requirements resulting from today's proposal. Furthermore, even if there were an increase in the use of ethanol blends, today's proposal allows for its use to be shifted to those areas where it is most economical. As a result, it is possible that some areas would have virtually 100 percent ethanol blended reformulated gasoline while others may have virtually no ethanol blended reformulated gasoline. Such a scenario would reduce concerns over commingling. Finally, even if both ethanol use and commingling do rise, the increase may be small. At present EPA has not been able to adequately quantify the commingling effects resulting from the use of ethanol blends, but requests comment on how significant such effects may be both under the provisions of the SNPRM and under the provisions of today's proposal.

C. NO_X Neutrality

A second element of President Bush's announcement was for EPA to establish a NO_X performance standard which was neutral with respect to the type of oxygenate being used. Under the simple model proposed in the SNPRM, and in keeping with the agreement reached through regulatory negotiation, EPA proposed that "MTBE in concentrations up to 2.7 weight percent oxygen and other oxygenates in concentrations up to 2.1 weight percent oxygen be assumed not to increase NO_X emissions." While "based on data available during the regulatory negotiations, it appeared that fuel oxygen content and the type of oxygenate used may have an impact on NO_X emissions," the data did "not allow for quantifying relationships between oxygenate type and concentration and NO_X emissions." Thus, based on the available information, caps were placed on oxygen content in order to permit the sale of reformulated gasoline and limit any potential NO_X emission increase until the complex model could be developed and implemented. Since the time the SNPRM was developed a great deal of additional data has become available which has gone into the development of the complex model (to be discussed later).

Under the complex model, all oxygenates are treated the same, i.e., based on oxygen content. There does not appear to be a significant difference between various oxygenates in their NO_X forming tendency. Also, under the complex model, other fuel changes that accompany the blending of oxygenates into the fuel (reductions in the concentrations of aromatics, olefins, sulfur, etc.) have been found to offset the NO_X increases caused by increasing the oxygen concentration. The results, which are described in the DRIA, show that on average 4–5 percent reductions in NO_X emissions are expected. Thus, the complex model is directionally consistent with the data used for the simple model. However, refiners would not be prohibited from adjusting their base gasoline in anticipation of dilution

so that a NO_X increase could occur. EPA does not anticipate that refiners will have an economic incentive to do this. At most, as described in section V.C. below, a one percent increase in NO_X emissions from certain fuels might occur. Given the much larger reductions projected on average, it is highly unlikely that a net NO_X increase could result under the simple model with oxygenate up to 2.7 wt% oxygen. As a result, EPA proposes that in keeping with the provisions of the SNPRM and the more recent data, all oxygenates be assumed to yield a no NO_X emission increase up to 2.7 wt% oxygen under the simple model. EPA requests comment on this view and the resulting proposal, and on the legal adequacy of relying on this expectation that no NO_X increase will occur. EPA also requests comment on whether any NO_X increase associated with oxygenates at or below 2.7 weight percent oxygen (should one be found to occur) may be considered *de minimis* and on whether EPA has legal authority to disregard such a NO_X increase as *de minimis*.

The one option available to prevent a NO_X increase from every batch of fuel would be to require refiners to use the complex model in 1995 (under the early use provisions described in section E. below) solely to certify that their fuels did not increase NO_X emissions. Given the effect of oxygenate on the other parameters of gasoline and the lack of economic incentive to worsen fuel quality via other means, this option should not pose a leadtime concern. EPA requests comment on this additional option as well.

D. Toxics Neutrality

In addition to NO_X neutrality, President Bush also requested that the toxics standards be set in such a manner as to be neutral with respect to the type of oxygenate used. EPA based the toxics performance standard in the SNPRM on the use of MTBE as the oxygenate in the fuel on the assumption that this would be the predominant oxygenate used to produce reformulated gasoline. Due to a characteristic of MTBE unique among oxygenates, evaporative benzene emissions are suppressed, and MTBE achieves a greater toxics performance on a weight percent oxygen basis than the other oxygenates. As a result, the toxics performance standard was proposed in the SNPRM in a manner which disadvantaged the other oxygenates by making it more costly for them to be utilized in reformulated gasoline. As is discussed in section VI, control of toxics emissions in reformulated gasoline is a very costly means of reducing cancer incidences. For this reason, basing the toxics standard on the sole oxygenate which achieves the greatest toxics control is not appropriate. Thus, EPA proposes that the toxics emission performance standard under the simple model be based upon the non-MTBE oxygenates. Applying this approach, the toxics performance standard required by the act is the greater of a 15 percent reduction or the performance of the formula fuel containing 2.0 wt% oxygen in the form of a non-MTBE oxygenate. Since a formula fuel containing non-MTBE oxygenates does not achieve the 15 percent minimum, EPA proposes that the air toxics performance standard under the simple model be 15 percent. In accordance with the provisions proposed in the SNPRM, EPA also proposes that the year-round averaging standard be 16.5 percent.

E. Unrestricted Early Use of the Complex Model

The CAA requires all refiners to reduce the VOC and air toxics emission forming tendency of their fuels by a minimum 15 percent below that of the 1990 average in-use fuel as defined in section 211(k)(10)(B) (referred to here as the CAA baseline). Due to the limited data available at the time of the regulatory negotiation (and SNPRM development), however, few of the effects of fuel parameters on emissions could be quantified and placed in the simple model even though they were known qualitatively to exist. As a result, EPA proposed in the SNPRM that all refiners hold such fuel parameters (sulfur, olefins, and T90) at or below their 1990 baseline levels. Because different refiners have significantly different 1990 baselines of sulfur, olefins, and T90, this proposal required some refiners to produce reformulated gasoline which was significantly less polluting than that produced by other refiners.

In order to maintain the same overall level of environmental control if refiners opted to use the complex model prior to its required use in 1997, EPA further proposed in the SNPRM that refiners who opted to use the complex model early would be required to maintain whatever emission performance they would otherwise have achieved using the simple model through the use of their own 1990 baselines. This was viewed by some refiners, however, as an impediment to early use of the complex model since they could be required to achieve greater environmental control in 1995–96 than in 1997. In response, EPA also proposed that since in the southern areas covered by a reformulated gasoline program, refiners would be required under the proposal to achieve greater than the minimum VOC control required by the Act, they be permitted the option to use the CAA baseline instead of their own individual baselines. In northern areas covered by the reformulated gasoline program refiners would still be required to use their own 1990 baselines.

In President Bush's announcement, he requested EPA to provide refiners with the broadest range of options possible in "meeting the pollution reduction requirements of the Act," and called for the "unrestricted" early use of the complex model. EPA today proposes that all refiners be permitted to utilize the complex model before its required use in 1997 to certify reformulated gasoline to be sold in all parts of the country with their performance measured against either their own 1990 baseline or the CAA baseline. Not only does this proposal grant refiners greater flexibility, but it also makes it easier for refiners to use renewable oxygenates such as ethanol in producing their fuel.

III. Complex Model

A. Baseline Emissions Under the Complex Model

In the SNPRM, EPA proposed that the emission baseline for the simple model would be based on light-duty vehicle emissions using a July 11, 1991 version of MOBILE4.1 with an assumption for enhanced I/M that is now more representative of EPA's requirements for basic I/M (57 FR 52950). This proposal was based on the best information available at the time. Since that time, a new version of the MOBILE model, MOBILE5.0, has been developed and both the basic and enhanced I/M requirements have been promulgated. These changes affect the baseline calculations and raise the issue as to whether and when to require the revised baseline.

The choice of MOBILE model and I/M program determines the level of baseline emissions established for baseline vehicles. The primary impact of this choice on baseline emissions is through changes in the ratio of baseline exhaust to non-exhaust VOC emissions. Since various reformulations will reduce exhaust and non-exhaust VOC emissions to varying degrees, changing the ratio of baseline exhaust and non-exhaust VOC emissions can affect the overall VOC emission reduction expected from a specific fuel reformulation. NO_X emission performance is unaffected since NO_X is only emitted via the exhaust. Toxics performance is only slightly affected (much less than VOC), since non-

exhaust toxics comprise only a small fraction of total toxics emissions.

As described in section V.C., the proposed complex model projects that typical simple model fuels will substantially reduce both exhaust and nonexhaust VOC emissions. The result is that the overall effectiveness of various Phase I reformulations is expected to be relatively insensitive to the baseline exhaust to non-exhaust VOC ratio. Also, given the no NO_x increase requirement and the effect of oxygenate on other fuel parameters, EPA expects fuels produced under the complex model to produce even greater reductions in exhaust VOC than those shown in section V.C., making their performance even less sensitive to the choice of MOBILE model. Thus, EPA is confident that fuels certified using a MOBILE4.1 baseline would meet at least the minimum 15 percent VOC reduction requirement even with a MOBILE5.0 baseline. Thus, there would appear to be little or no air quality or other impact of delaying implementation of a revised baseline based on MOBILE5.0.

The assumptions made in the SNPRM with respect to the appropriate enhanced I/M program to assume for Phase I may also be reasonable through the end Phase I. While enhanced I/M is required in many ozone nonattainment areas starting January 1, 1995, its full implementation may be later than this in several important ways including a phase-in of emission cut points and a phase-in of the percentage of the fleet being tested. It is therefore possible that areas will not realize the full in use benefits of those programs until near the end of the Phase I period. The complex model, however, will be available as an option as early as 1995, and as proposed would not be mandated for use in certifying VOC controlled fuel until the 1997 ozone season at the earliest.

At the same time, changing the baseline in 1997 could potentially change the overall stringency of the VOC performance standard for some refiners and require them to invest additional capital to further control RVP or other fuel parameters. The statutory structure established by Congress creates a two-phase program (beginning in 1995 and 2000, respectively), and maintaining a consistent level of emission performance through the first five years of the program is consistent with this structure.

Therefore, EPA proposes to retain the baseline proposed in the SNPRM for use with the complex model prior to 2000. This is based on the lack of adverse air quality impact, EPA's confidence that the required statutory minimum reductions are not at risk, and the potential disruption in the latter years of Phase I for at least some refiners. EPA requests comment on all of these points, including comment on utilizing an emissions baseline based on either the official version of MOBILE4.1 or MOBILE5.0 beginning in 1997. EPA also requests comment on the appropriateness of the I/M program assumptions discussed above and the appropriateness of other I/M program assumptions. The Agency specifically requests comment from the States on the type of enhanced I/M program they plan on implementing (e.g., annual, biennial, emission cut-points, etc.), their projected schedules for implementation, and the timetable for any expected phase-ins. EPA invites comment on the degree of change in fuel formulation which might occur and their environmental, energy, cost and leadtime consequences. Changes in the baseline modeling assumptions, if appropriate, would also lead to corresponding changes in the Phase I complex model standards.

With the onset of the Phase II performance standards in 2000, the overall stringency of the standards is already changing and a new baseline based on MOBILE5.0 will not, by itself, be the cause of new investment by refiners. Also, by this time, enhanced I/M programs should be fully operational in nearly all reformulated gasoline areas. Therefore, for Phase II EPA proposes that the baseline for the complex model be based on light-duty vehicle and light-duty truck emissions using MOBILE5.0 with enhanced I/M.

B. Complex Model for Exhaust Emissions

1. Data Sources

The relationship between fuel properties and exhaust emissions is complex and the theory behind such relationships continues to be developed. As a result, EPA has asked industry, state regulatory agencies, and other organizations with relevant test data to make their data available to the Agency to ensure that this rule is based on as much relevant information as possible. The complex model described in the following section is based on data generated from a number of exhaust emissions testing programs. These programs, their design intent, and their limitations are discussed in the Draft RIA. Data from these programs were excluded from EPA's analysis if the data were not based on a valid FTP measurement cycle, if the vehicle in question did not employ 1990-equivalent emission control technology, or if nonmethane hydrocarbon measurements were not taken. The Agency believes its analysis considered all available, valid, and relevant data on the exhaust emissions effect of fuel modifications when used in 1990 model year and equivalent vehicles. Since these test programs generally involved different vehicles, different fuels, and in some cases different test procedures, the analysis required to determine the relationship between fuel properties and emissions is complex. However, EPA believes that the model proposed below appropriately considers and addresses these complexities.

2. Analysis Method

Exhaust emissions are affected by both vehicle and fuel characteristics, which makes identification of fuel effects on emissions difficult. EPA has considered and in some cases tested a number of analysis methods, many of which were presented during a series of public workshops held by EPA over the past year. Information regarding these methods can be found in Docket A–92–12. The approach chosen by EPA to analyze the data described in section III.B.1 is summarized below and is discussed more fully in the Draft RIA. EPA utilized statistical analysis techniques to determine the effects of fuel modifications on exhaust emissions of VOC, NO_x, and toxics. At a series of five public workshops held over the past year, the Agency has presented its data sources, proposed analysis methods, and preliminary emissions models for public review and comment. The Agency has also requested other organizations to share their data, analysis expertise, and emissions models at these workshops. The Agency believes that today's proposal appropriately incorporates the comments and suggestions regarding the analysis process received at the workshops and during the course of the past year from industry, state and federal government authorities, and other interested parties. The resulting exhaust emission models have been validated through confirmatory testing and analysis.

EPA's analysis separated exhaust emissions into fuel components and vehicle components. In all test programs analyzed by EPA, the single most significant determinant of the level of emissions from a given vehicle on a given fuel was the vehicle itself. Fuel properties exert a much smaller influence on exhaust emissions than do vehicle characteristics such as emission control system technology, vehicle mileage, catalyst efficiency, oxygen sensor efficiency, engine size, engine

design, vehicle size, fuel efficiency, and vehicle maintenance. To identify the effects of fuel property modifications on emissions, EPA found it necessary to identify the effect of each vehicle on emissions and separate this effect from the fuel effects.

The fuel components of exhaust emissions were separated into two main categories. The first category consisted of the effects of individual fuel parameters. For example, the effect of sulfur on hydrocarbon emissions was best modeled by a relationship containing a linear sulfur term and a second-order sulfur term (a term of the form c_1S^2, where c_1 is a constant and S is the sulfur level). The second category of fuel terms consisted of interactive effects between two fuel parameters. EPA's analysis of NO_X emissions, for example, found that oxygen's effect on NO_X is related to the aromatics level of the fuel. This effect cannot be represented as an oxygen or aromatics effect alone but must be represented as an interactive term of the form c_2XA, where c_2 is a constant, X is the oxygen level, and A is the aromatics level.

The effect of each fuel term was determined separately for each technology group within each emitter class for NO_X and VOC emissions. Technology groups and emitter classes, their importance in determining the effects of fuel modifications on emissions, and their definitions are discussed more fully in the Draft RIA and simple model SNPRM. The linear terms for all fuel parameters were retained, while only those second-order and interactive terms that were statistically significant at the 85 percent level were retained. Retention of non-significant linear terms reflects the general consensus of public workshop participants regarding appropriate analysis and modeling methods and a desire to keep this potentially very complex model as simple, yet as accurate, as possible. EPA requests comment on the appropriateness of the significance level used to exclude terms from the model and the inclusion of non-significant linear terms. Because vehicles can have different emission control systems, the Agency anticipated that fuel modifications would have different emission effects on different types of cars. EPA has found it necessary to develop terms unique to technology groups to assure the predictive power of the complex model. EPA also has found that vehicles classified as "high emitters" respond very differently to fuel modifications than do normal emitting vehicles. Hence the terms described above were defined and determined separately for each technology group within each emitter class for VOC and NO_X emissions.

EPA chose a different approach when modeling emissions of exhaust toxics. Many of the studies available to EPA did not measure exhaust toxics, so the data on exhaust toxics emissions is less complete than the data on exhaust VOC and NO_X emissions. This problem is particularly acute for high emitters. In addition, baseline estimates of toxics emissions are not available from the MOBILE models, so a different source of baseline toxics estimates had to be found. To overcome the limited amount of data on high emitters, the Agency chose to combine normal and high emitters into a single emitter class while retaining the technology group distinction. To overcome the absence of baseline toxics data from the MOBILE models, the resulting toxics model was then adjusted to compensate for differences between the average VOC exhaust emission levels for those vehicles for which toxics data were available and the 1990 model year, in-use emission levels projected by the MOBILE models. This process is discussed in more detail in the DRIA.

Since the proposed models for normal and high emitter VOC emissions differ substantially, and since the compounds classified as toxic in section 211(k) are VOCs, the Agency is concerned that this approach based on absolute mass emissions may not accurately represent the effects of fuel changes on toxics emissions from high emitters. The Agency has considered modeling toxics emissions as mass fractions of total VOC emissions (as was proposed in the simple model NPRM and SNPRM) but has found models of toxics in terms of absolute mass to have very high predictive power. However, this conclusion could be the result of limited high emitter toxics data. In addition, the mass fraction approach can be more readily extrapolated to winter conditions than can the absolute mass emissions approach. EPA requests comment on the appropriateness of the mass fraction and absolute mass emissions approaches.

EPA focused its modeling efforts on those fuel parameters thought to affect vehicle emissions based on available test results. Oxygen, RVP, aromatics, olefins, T90, sulfur, and benzene were identified as relevant fuel parameters in the negotiated agreement. T50 was identified as a potentially significant parameter by a number of testing programs and at several public workshops.

EPA anticipates that further refinements to the model will be made prior to finalization of this rule. First, the Agency expects to convert its fuel distillation curve data to a percent evaporated basis, thereby replacing T50 and T90 with terms such as E200 and E300 (the volume percentage of the fuel evaporated at 200 °F and 300 °F, respectively). The percent evaporated terms are thought to be more directly relevant to the generation of exhaust emissions than the distillation parameters. In addition, the percent evaporated values for a mixture of fuels can be calculated directly from the percent evaporated values of each component of the mixture, while the distillation values for a mixture must be measured separately. This characteristic has important implications for certification and enforcement. Second, the Agency will attempt to determine the influence of the type of aromatic compounds in fuels, specifically heavy aromatics, on exhaust emissions, since preliminary test data suggests that both the level and type of aromatic compounds may affect emissions. Third, EPA expects to include additional emission testing data as they become available, and such data may affect the results of the modeling process discussed above. Specific test programs expected to provide additional data include the second half of Auto/Oil's T50/T90 study and EPA's Phase II reformulated gasoline test program. EPA's Phase II test program data is available and has been used to confirm the validity of the model presented in § 80.45. After using either the EPA Phase II or Auto/Oil T50/T90 studies to confirm the revised model, EPA expects to include the data used in this confirmation in its database to develop a final model. Fourth, EPA anticipates changing the confidence level required to allow additional terms into the model to 90 percent, in keeping with past EPA practice.

Finally, EPA expects to complete its analysis of the importance of technology group and emitter class distinctions prior to finalization of this rule. Preliminary analyses confirm that the original classification scheme does capture significant differences in the emissions performance of fuels, as can be seen by examining the differences in the exhaust emission equations for specific technology group/emitter class categories as presented in the Draft RIA. These distinctions may be changed if further analysis indicates that changes are necessary to adequately estimate the effects of fuel modifications on vehicle emissions. At the present time, EPA is considering reducing the number of technology group categories for normal emitters by eliminating technology

groups which contribute a very small proportion of total mobile source emissions or combining such groups with other, similar technology groups. EPA is also considering subdividing high emitters by their emission characteristics, particularly their exhaust hydrocarbon to NO_X ratio, rather than by vehicle technology. This modification reflects EPA's belief, supported by preliminary field information, that one or more emission control components on high emitters tend to be malfunctioning, which renders a classification scheme based on vehicle equipment potentially suspect. EPA requests comment on these potential changes in its technology group definitions and on the other potential changes in its analysis approach discussed above. EPA will place its revised version of the complex model for exhaust emissions (referred to as "Iteration 4" of the model), which incorporates the changes discussed above, and its supporting materials in the docket for review and comment as soon as it is completed. The American Petroleum Institute (API) has also developed its own version of a complex model, which has been placed in the docket for this rulemaking. EPA requests comment on the various aspects of API's statistical and engineering approach and on its overall suitability for use in EPA's complex exhaust emission model.

3. Complex Exhaust Emissions Model Equations

As was discussed in the SNPRM, EPA believes that the exhaust emission effects of fuel modifications are different when applied to vehicles with different emission control and fuel distribution technologies. In addition, EPA believes that the emissions effects of fuel modifications also depends on the level of emissions from the vehicle. During development of the complex model, preliminary investigation of these assumptions have supported the approach described above. The complex model incorporates these effects on an emissions-weighted basis, i.e., fuel effects on each technology group/emitter class category were weighted according to the contribution to in-use emissions of 1990 vehicles from that category. To determine the contribution of each technology group to in-use emissions, EPA calculated the fraction of 1990 model year sales of light duty vehicles and trucks from each technology group. EPA used non-California sales figures for this analysis since vehicles certified as "California-only" vehicles are required to meet a different set of emission standards than other cars sold in the U.S., and since California will have established its own reformulated gasoline program by 1996 that is expected to exceed the stringency of the federal program. EPA requests comment on the exclusion of California vehicles from its calculation of 1990 sales fractions. EPA then adjusted this fraction to reflect the differences in average emissions among technology groups where such information was available. This adjusted fraction is represented by the "W" constants in the model proposed in § 80.45.

Because the equations are in the form of exponential equations, it is necessary to normalize each equation to a known emission value on a known fuel for each technology group. The resulting proportionality constant is represented by the "k" constants in the model proposed in § 80.45. In effect, the "k" constant transforms a percentage increase or decrease into a gram per mile figure corresponding to that percentage change from baseline emissions. The rationale for and derivation of the "k" and "W" constants are discussed in more detail in the DRIA.

Since the effects of fuel modifications on emissions differ across technology groups and emitter classes, EPA has developed separate models for each technology group-emitter class combination for which sufficient data were available. The emissions performance of a given fuel reformulation for a specific pollutant can be determined by taking the following steps. First, each technology group-emitter class model for the pollutant in question would be evaluated for the specific fuel formulation being evaluated. Second, the resulting predicted emissions for each technology group-emitter class combination would be weighted by the estimated contribution of that combination to total miles traveled and these weighted emissions would be added together. Third, the total predicted emissions would be compared to the baseline emissions level for the pollutant in question. The emissions performance of the fuel reformulation would be defined as the percentage change in total emissions from baseline emission levels, which are discussed below in section B.

The specific equations that comprise the complex model can be found in § 80.45 of the regulations proposed for this rule. For the most part, their derivation is straightforward and can be found in the Draft RIA. In some cases, available data were insufficient to develop models for every technology group-emitter class category. In such cases, the weighting factors for the categories which could be modeled were renormalized to adjust for the absence of data. This process is discussed more fully in the Draft RIA. The Draft RIA and the proposed regulations also discusses the range of parameter values for which these equations are valid. As discussed in the SNPRM, refiners are required to submit data to augment the model if they wish to certify fuels with properties that fall outside this range. EPA requests comment on deviations between the model's predictions and the data used to develop the model, on the model equations themselves, on their derivation, and on the ranges over which these equations are considered valid.

The model presented in § 80.45 is based on emissions data generated under summer conditions. While the VOC performance standard for reformulated fuels applies only in the summer, the toxics and NO_X requirements apply year-round. Hence, the complex model must cover typical winter, as well as summer, fuels. However, the model presented in § 80.45 is based on data generated under summer conditions and cannot be used directly for fuels with typical winter RVP levels. EPA proposes to use a modified version of the complex model as presented in § 80.45 to evaluate winter fuels. This modified version would assign an RVP value equal to that of summer baseline gasoline, i.e., 8.7 psi, for all non-VOC controlled fuels when evaluating the toxics and NO_X emissions performance of such fuels (including winter baseline fuels). RVP's impact on canister loading and subsequent purging is thought to be the primary cause of its effects on exhaust emissions. Since data do not exist on the effects of winter fuels on canister loading under winter conditions, the Agency believes it is not appropriate to attempt to model the effects of winter RVP levels on emissions. Fixing the RVP value of winter fuels at baseline levels for modeling purposes effectively removes the influence of RVP on winter exhaust toxics and NO_X emissions. EPA requests comment on this approach, particularly on the ability of the non-RVP factors in the complex model to accurately predict winter toxic and NO_X emissions.

C. Complex Model for Nonexhaust Emissions

The model for nonexhaust emissions is based on data generated by EPA to develop its MOBILE emission inventory models. The Agency believes that the relationship between fuel properties and

nonexhaust emissions is less complex and better understood than for exhaust emissions. Data from EPA's ongoing evaporative emissions testing has been used to develop MOBILE4.1 and MOBILE5.0. EPA believes this data to be sufficient to model the relationship between fuel properties and nonexhaust emissions. Additional information about MOBILE4.1 and MOBILE5.0 can be found in Dockets A–91–02 and A–92–12.

Non-exhaust emissions are less affected by vehicle design and are influenced by fewer fuel characteristics than are exhaust emissions. In addition, the theoretical principles involved in evaporative emissions are better understood, and evaporative emission control technologies are more consistent across vehicles than are exhaust emission controls. EPA is in the process of developing an evaporative emissions model based on fundamental theoretical principles and actual test data that are expected to be more accurate and more widely applicable to oxygenated fuels than MOBILE4.1. A preliminary version of this model was discussed at a public workshop held on August 25, 1992, and materials related to this model have been placed in the docket for this rulemaking. At this time, however, the enhanced evaporative emissions model is not complete and is not expected to be completed prior to publication of the final rule.

As a result, the Agency is proposing correlations relating RVP to nonexhaust emissions derived from the MOBILE4.1 emissions model issued November 1991. To develop the correlations shown below, MOBILE4.1 was used with temperatures of 69 to 94 degrees Fahrenheit for Class B areas and 72 to 92 degrees Fahrenheit for Class C areas, assuming the existence of an enhanced inspection and maintenance program. In addition, the presence of Stage II evaporative emissions recovery systems with an overall vapor recovery efficiency of 86 percent was assumed (as discussed in the SNPRM and NPRM). Should the enhanced evaporative emissions model not be developed in time for inclusion in the final rulemaking, EPA proposes to utilize the July 11, 1991 version of MOBILE4.1 to determine the effect of RVP on nonexhaust VOC emissions under the Phase I performance standards (i.e., 1995–1999) and to utilize MOBILE5.0 to do the same under the Phase II performance standards (i.e., 2000 and beyond). This would be in keeping with the proposed baseline emissions described in section A above and, again, minimize the changes refiners have to undergo in the transition from the simple to the complex model. The Agency requests comment on this proposed basis for determining non-exhaust VOC emissions, including comment on the appropriate MOBILE model and I/M assumption.

As discussed in the SNPRM, the Agency's correlation between fuel benzene content and non-exhaust benzene emissions is based on General Motors' proprietary model of tank vapors, and its independent confirmation by data generated by EPA using a number of fuels. Both the derivation and verification of the non-exhaust benzene emissions model is discussed more fully in the Draft RIA. EPA requests comment on the use of the correlation between fuel benzene content and non-exhaust benzene emissions derived from the General Motors model and the sufficiency of EPA's independent confirmation of its results.

As was also discussed in the SNPRM, EPA believes that nonexhaust VOC and toxics emissions (including running loss, hot soak, diurnal, and refueling emissions) depend primarily on the RVP of the fuel. The Agency proposes that the nonexhaust VOC and toxics equations found in § 80.45 of the proposed regulations be used to determine nonexhaust VOC and toxics emissions, respectively. These equations relate VOC emissions to the RVP of the fuel. Nonexhaust benzene emissions are determined by the level of benzene in the fuel and the level of nonexhaust VOC emissions. EPA requests comment on this approach and on the equations proposed in § 80.45, the derivation of which is discussed more fully in the Draft RIA.

IV. Vehicle Testing

As was discussed in the simple model SNPRM, the complex model may be augmented based on the results of vehicle testing. EPA considers the testing program discussed in the SNPRM to be appropriate in terms of the fuels, number of vehicles, and test procedures specified. However, the Agency now believes the analysis process described in the SNPRM to be inconsistent with the process used to develop the complex model and may be overly complex.

As a result, EPA proposes that the data generated during vehicle testing be analyzed statistically as described in § 80.48. This analysis would fit a stepwise regression model to the data that includes the following terms: A vehicle term, a linear term for the parameter being tested, and squared and interactive terms involving the parameter being tested if significant at the 90 percent confidence level. The analysis would treat normal emitters and high emitters as separate populations but would not subdivide the emitter categories into technology groups for analysis purposes, since the test fleet compositions specified in § 80.60 assure that the normal and high emitter test fleets include technology groups that reflect their contribution to in-use emissions. In addition, the statistical power of the test program would be compromised by subdividing each emitter class test fleet into technology groups since the number of vehicles in each technology group would be small. EPA believes that this approach is more consistent with the process used to develop the complex model, is less susceptible to manipulation and gaming by testing organizations, and is capable of extracting the maximum amount of information from the test data.

In today's proposal, EPA has deleted § 80.57 and § 80.58 from its proposed regulations. These sections specified procedures for determining the presence and significance of nonlinear and interactive emission effects of fuel parameters being tested. EPA believes the regression-based analysis approach described in § 80.48 to be more accurate and less complex than the procedures described in § 80.57 and § 80.58 of the April 16, 1992 proposal. Since the regression-based approach explicitly determines nonlinear and interactive effects, the Agency considers the deleted sections to be unnecessary and burdensome. EPA requests comment on these proposed deletions and on the proposed modification to the testing proposal outlined in the SNPRM.

V. Phase I Performance Standards Using the Complex Model

A. Baseline Emission Estimates

The following table summarizes the Agency's proposed estimates of VOC and NO_X emissions from in-use, 1990 technology vehicles when fueled with Clean Air Act baseline gasoline. All VOC emission estimates are given in terms of non-methane, non-ethane hydrocarbon emissions. In today's notice, EPA further proposes to redefine "ozone forming VOCs" as used in section 211(k) to exclude ethane. This redefinition is consistent with the Agency's most recent definition of VOC as "any compound of carbon * * * which participates in atmospheric photochemical reactions * * * other than the following, which have been determined to have negligible photochemical reactivity: Methane, ethane, * * *." (See 40 CFR 51.100(s)

February 3, 1992), which excludes both ethane and methane from its definition of ozone forming VOCs (57 FR 3941). Ethane comprises approximately three percent of total hydrocarbon emissions but, like methane, is far less reactive in the atmosphere than other hydrocarbons.

TABLE V–1.—BASELINE VOC AND NO_X EMISSIONS (MOBILE4.1 WITH SNPRM I/M), G/MI

	Class B	Class C
Summer:		
Exhaust VOC emissions	0.448	0.446
Hot soak VOC emissions	.255	.230
Diurnal VOC emissions	.125	.109
Running loss VOC emissions	.431	.390
Refueling VOC emissions	.040	.040
Total summer VOC emissions	1.307	1.215
Winter exhaust VOC emissions	.660	.660
NO_X emissions	.66	.66

The following table summarizes the Agency's estimates of toxics emissions from in-use, 1990 technology vehicles when fueled with Clean Air Act baseline gasoline. These estimates were derived from the complex emission models described in section III and were based on the July 11, 1991 pre-release version of MOBILE4.1 emission inventory model with the I/M program assumptions described in the SNPRM. As discussed in the SNPRM, separate estimates were made for nonexhaust toxics emissions from Class B and C areas and for summer and winter emissions.

TABLE V–2.—BASELINE TOXICS EMISSIONS (MOBILE4.1 WITH SNPRM I/M), MG/MI

	Summer		Winter[1]
	Class B	Class C	Class B & C
Exhaust benzene emissions	25.37	25.37	22.04
Formaldehyde emissions	3.80	3.80	3.79
Acetaldehyde emissions	2.06	2.06	1.81
1,3-butadiene emissions	3.28	3.28	3.00
POM emissions	1.50	1.50	1.45
Diurnal benzene emissions	1.30	1.13	.....
Hot soak benzene emissions	3.02	2.83	.....
Running loss benzene emissions	4.92	4.46	.....
Refueling benzene emissions	0.42	0.42	.....
Total baseline toxics emissions	45.87	44.84	32.05

[1] Based on EPA's proposed complex model evaluated for winter baseline gasoline and assuming that wintertime evaporative emissions are negligible, as is discussed in the SNPRM (57 FR 13416).

B. Complex Model Performance of the "Formula Fuel"

The proposed complex model equations predict that the formula fuel would produce a reduction in exhaust VOC emissions of 12.3 percent and no reduction in nonexhaust VOC emissions when measured relative to the Clean Air Act baseline fuel. The resulting overall VOC emissions reduction of the formula fuel is 6.1 percent in Class B areas and 6.5 percent in Class C areas. The proposed complex model further indicates that the annual average toxics performance of an MTBE-based formula fuel would be an 11.7 percent reduction in Class B areas and an 11.2 percent reduction in Class C areas. The annual average toxics performance of the ethanol-based formula fuel would be an 11.5 percent reduction in Class B areas and an 11.0 percent reduction in Class C areas. These are lower reductions than those discussed in the SNPRM. The current estimate are believed to be more accurate given they are based on the proposed complex model rather than on the simple model. The Agency estimates that formula fuels using other oxygenates, such as ETBE or TAME, would result in VOC and toxics performance similar to that of ethanol-based formula fuels.

C. Complex Model Performance of Simple Model Fuels

The simple model specifies a number of fuel parameters to assure satisfactory emissions performance under the simple model. Many of the complex model relationships between these fuel parameters and emissions performance are different than the corresponding relationships in the simple model. As a result, the complex model predicts different emission performance levels than does the simple model for a given fuel formulation. The following tables summarize the predicted simple model and complex model performance levels for four different fuels relative to two specified baseline fuels. The first baseline fuel is the CAA baseline fuel as specified in the Act. The second baseline fuel is identical to CAA baseline fuel except for its RVP, which is set at the level required by Phase II volatility controls in Class B areas. This second baseline fuel is referred to as "Class B baseline fuel."

The four summer fuels described in Table V–3 would meet the proposed VOC requirements for Class C and Class B areas, respectively, under averaging standards, and assuming that winter fuels are reformulated to a similar extent, would meet the toxics requirements. Under the simple model, the toxic emission effects of different oxygenates vary, so two different fuels with aromatics levels sufficient to assure compliance with the simple model toxic emission performance standards are shown for each area.

Tables V–4 and V–5 summarize the summer performance of the fuels described in Table V–3 relative to the CAA baseline fuel according to both the simple and complex emission models. Table V–6 summarizes the emissions performance of Fuels 3 and 4 relative the Class B baseline fuel using both models. Tables V–4, V–5, and V–6 use baseline emissions derived using the July 11, 1991 pre-release version of MOBILE4.1 with essentially a basic I/M program.

TABLE V–3.—SAMPLE FUEL COMPOSITIONS

	Class C		Class B	
	Fuel 1	Fuel 2	Fuel 3	Fuel 4
Fuel characteristics:				
Oxygenate	MTBE	EtOH	MTBE	EtOH
Oxygen, weight percent	2.1	2.1	2.1	2.1
Aromatics, volume percent	26.3	24.3	26.2	23.9
Olefins, volume percent	9.2	9.2	9.2	9.2
Benzene, volume percent	0.95	0.95	0.95	0.95
Sulfur, parts per million weight	339	339	339	339

TABLE V–3.—SAMPLE FUEL COMPOSITIONS—Continued

	Class C		Class B	
	Fuel 1	Fuel 2	Fuel 3	Fuel 4
T50, degrees Fahrenheit	210	216	218	218
T90, degrees Fahrenheit	330	330	330	330
RVP, pounds per square inch	8.0	8.0	7.1	7.1

TABLE V–4.—SIMPLE AND PHASE I COMPLEX MODEL SUMMER EMISSIONS REDUCTIONS OF FUELS 1 AND 2 IN CLASS C AREAS RELATIVE TO CAA BASELINE GASOLINE

[In percent]

	Simple model reductions		Complex model reductions	
	Fuel 1	Fuel 2	Fuel 1	Fuel 2
Exhaust VOC	9.0	9.0	13.0	15.4
Nonexhaust VOC	23.9	23.9	23.9	23.9
Total VOC	18.8	19.8	19.9	20.8
NO_X	0.0	0.0	−0.8	0.1
Toxics	22.4	23.4	22.4	23.1

TABLE V–5.—SIMPLE AND PHASE I COMPLEX MODEL SUMMER EMISSIONS REDUCTIONS OF FUELS 3 AND 4 IN CLASS B AREAS RELATIVE TO CAA BASELINE GASOLINE

[In percent]

	Simple model reductions		Complex model reductions	
	Fuel 3	Fuel 4	Fuel 3	Fuel 4
Exhaust VOC	9.0	9.0	14.3	17.0
Nonexhaust VOC	51.4	51.4	51.4	51.4
Total VOC	37.2	37.2	38.7	39.6
NO_X	0.0	0.0	−2.5	−2.0
Toxics	25.7	27.1	26.7	27.9

TABLE V–6.—SIMPLE AND PHASE I COMPLEX MODEL SUMMER EMISSIONS REDUCTIONS OF FUELS 3 AND 4 IN CLASS B AREAS RELATIVE TO CLASS B BASELINE GASOLINE

[In percent]

	Simple model reductions		Complex model reductions	
	Fuel 3	Fuel 4	Fuel 3	Fuel 4
Exhaust VOC	9.0	9.0	13.2	15.9
Nonexhaust VOC	29.8	29.8	29.8	29.8
Total VOC	21.3	21.3	22.7	23.6
NO_X	0.0	0.0	−2.5	−2.0
Toxics	22.2	23.7	17.3	18.7

It should be noted that the above fuels show slight NO_X emission increases when using the complex model. This occurs because Fuels 1–4 assume no effect of oxygenate on fuel sulfur, T50, and T90, and a minimal effect on fuel aromatics. As discussed in the Draft RIA, when oxygenates typical effect on these fuel parameters are taken into account, which EPA expects will happen on average under the simple model, these NO_X emission increases disappear and NO_X emissions should actually decrease slightly at both 2.1 and 2.7 weight percent oxygen, regardless of the oxygenate used. The same holds true for the results shown in Tables V–7 through V–10 below.

For comparison, Tables V–7 through V–10 summarize the summer performance of the fuels described in Table V–3 relative to the CAA baseline fuel according to two alternative Phase I complex models. The complex model used to derive the results in Tables V–7 and V–8 utilized baseline emissions from MOBILE5.0, while the complex model used to derive the results in Tables V–9 and V–10 utilized baseline emissions from the official version of MOBILE4.1. Both alternative Phase I complex models assumed basic I/M. A discussion of both of these alternative models can be found in the Draft RIA.

TABLE V–7.—SUMMER EMISSIONS REDUCTIONS OF FUELS 1 AND 2 IN CLASS C AREAS RELATIVE TO CAA BASELINE GASOLINE USING A COMPLEX MODEL BASED ON THE OFFICIAL VERSION OF MOBILE5.0

[In percent]

	Complex model reductions	
	Fuel 1	Fuel 2
Exhaust VOC	13.1	15.4
Nonexhaust VOC	24.8	24.8
Total VOC	17.8	19.1
NO_X	−0.8	0.1
Toxics	23.2	23.8

TABLE V–8.—SUMMER EMISSIONS REDUCTIONS OF FUELS 3 AND 4 IN CLASS B AREAS RELATIVE TO CAA BASELINE GASOLINE USING A COMPLEX MODEL BASED ON THE OFFICIAL VERSION OF MOBILE5.0

[In percent]

	Complex model reductions	
	Fuel 3	Fuel 4
Exhaust VOC	14.3	17.0
Nonexhaust VOC	49.2	49.2
Total VOC	28.9	30.5
NO_x	−2.5	−2.0
Toxics	27.4	28.5

TABLE V–9.—SUMMER EMISSIONS REDUCTIONS OF FUELS 1 AND 2 IN CLASS C AREAS RELATIVE TO CAA BASELINE GASOLINE USING A COMPLEX MODEL BASED ON THE OFFICIAL VERSION OF MOBILE4.1

[In percent]

	Complex model reductions	
	Fuel 1	Fuel 2
Exhaust VOC	13.0	15.4
Nonexhaust VOC	25.8	25.8
Total VOC	21.3	22.1
NO_x	−0.8	0.1
Toxics	22.9	23.6

TABLE V–10.—SUMMER EMISSIONS REDUCTIONS OF FUELS 3 AND 4 IN CLASS B AREAS RELATIVE TO CAA BASELINE GASOLINE USING A COMPLEX MODEL BASED ON THE OFFICIAL VERSION OF MOBILE4.1

[In percent]

	Complex model reductions	
	Fuel 3	Fuel 4
Exhaust VOC	14.3	17.0
Nonexhaust VOC	51.3	51.3
Total VOC	30.1	40.0
NO_x	−2.5	−2.0
Toxics	27.0	28.3

D. Phase I Complex Model Performance Standards

1. Phase I Complex Model Toxics Standards

Under CAA section 211(k)(3), during 1995 through 1999, a reformulated gasoline's toxic emissions performance must meet or exceed that of a specified formula fuel or a 15 percent reduction from that of baseline gasoline, whichever is greater. As discussed in the SNPRM, the simple model predicts that the formula fuel achieves an average annual toxic emissions reduction of 16.5 percent, thus setting the toxic emissions standard for refiners certifying their reformulated gasolines under the simple model. The complex model for toxics emissions proposed above, however, predicts a different toxics emissions performance for the formula fuel. The complex model indicates that the annual average toxics performance of an MTBE-based formula fuel would be an 11.7 percent reduction in Class B areas and an 11.2 percent reduction in Class C areas. The annual average toxics performance of the ethanol-based formula fuel would be an 11.5 percent reduction in Class B areas and an 11.0 percent reduction in Class C areas. The Agency estimates that formula fuels using other oxygenates, such as ETBE or TAME, would result in VOC and toxics performance similar to that of ethanol-based formula fuels. Since these emission reductions are smaller than the 15 percent minimum reduction specified in the Act, EPA proposes that the toxics performance standard under the complex model be set 15 percent below the toxics emission level of baseline gasoline.

EPA has considered basing its toxics performance standard on the performance of simple model fuels rather than the statutory requirements. The Agency is not proposing such an approach in today's notice for the reasons outlined in the SNPRM. In particular, the Agency is concerned that such standards would have an adverse impact on refiners whose 1990 baseline levels of sulfur, aromatics, T50, and T90 are higher than CAA baseline levels of these parameters. Since the simple model does not include these parameters while the complex model does, such refiners may face additional expenditures in 1997 to comply with the statutory requirements. A more stringent set of standards in 1997 would raise the cost of the program substantially. As discussed in the Draft RIA, EPA does not believe that more stringent controls are cost effective in the case of toxics. EPA requests comment on the proposed toxics standards.

2. Phase I Complex Model VOC Standards

Both the simple model and the complex model predict that the VOC emission performance of the formula fuel would be less stringent than the 15 percent standard specified in the Act. As a result, Phase I VOC performance standards will not be determined by the performance of the formula fuel.

As discussed in the NPRM and SNPRM, the Agency believes that Fuels 3 and 4 are producible, with Fuel 3 considered more representative of typical Class B simple model fuels. Since such fuels (which will be required in Class B under the simple model) would achieve VOC emissions reductions of 38.7 to 39.6 percent relative to the CAA baseline fuel under the complex model, EPA proposes that the Phase I performance standard for VOC emissions in Class B areas be set by the performance of Fuel 3, as predicted by the complex model. This performance standard amounts to a 38.7 percent reduction in VOC emissions relative to CAA baseline levels and a 22.7 percent reduction from the VOC emission level of Class B baseline gasoline.

The above VOC reductions were based on fuels just complying with the 0.95 volume percent benzene standard (with averaging) and aromatic content adjusted accordingly. Simple model fuels with lower benzene levels could have higher levels of aromatics. Due to beneficial effect of reduced aromatics on VOC emissions, Fuels 3 and 4 described above produce slightly greater VOC reductions than simple model fuels with lower benzene and higher aromatic levels. For example, with benzene levels at 0.80 volume percent, the VOC reduction decreases to 37.5–38.4 percent relative to CAA baseline gasoline and 21.1–22.3 percent relative to Class B baseline gasoline (see DRIA). EPA requests comment on setting the Class B VOC performance standard based on the performance of simple model fuels. EPA also requests comment on utilizing Fuel 3 to set this performance and, if Fuel 3 was not used, which particular simple model fuel should be used to set the performance standard.

EPA is also considering setting the Class C VOC standard on the performance of simple model fuels. As shown above, Fuels 1 and 2 achieve greater than the 15 percent minimum statutory requirement. However, with a lower benzene level of 0.8 volume percent is considered, the VOC performance of Class C fuels decrease slightly to 18.3–19.1 percent (see DRIA). EPA requests comments on setting the VOC performance standard based on the performance of simple model fuels and on where in the range of this performance. In both cases, the Agency invites comment on the air quality and cost impacts which would result.

E. Dilution and Interactive Effects

In the SNPRM and at a number of public workshops, EPA has indicated its concern over the possibility that mixtures of reformulated fuels may not achieve the emissions reductions of either fuel in isolation. The Agency has investigated the possibility of unfavorable dilution or interactive

effects occurring between reformulated fuels. Since EPA has not been able to resolve these concerns, today's notice does not propose any measures to control such effects. EPA requests comment on whether and how it should account for and control such effects and refers the reader to Docket A–92–12 for additional information on this issue.

VI. Phase II Reformulated Gasoline Performance Standards

A. Legislative Requirements

Section 211(k)(3)(B) of the Clean Air Act requires, in the year 2000 and beyond, that aggregate emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from baseline vehicles using reformulated gasoline be 25 percent below emissions from baseline vehicles using baseline gasoline during the high ozone season. The Act also specifies that the 25 percent reduction level may be adjusted to provide for a greater or lesser reduction based on technological feasibility, including consideration of the cost of achieving the reductions. However, in no case can the required reductions be less than 20 percent. The required emission reductions are called, hereafter, the Phase II standards.

The Phase II requirements would apply to gasoline which is sold in those ozone nonattainment areas required to receive reformulated gasoline and in those areas which have already opted into the program or which opt in at a later date. However, EPA is considering and requesting comment on an option that would permit states to opt-in to only Phase I and maintain the Phase I requirements beyond the year 2000. Compliance with the Phase II standards (and all reformulated gasoline certification) would not change relative to that with the Phase I standards for 1997 and beyond.

Section 211(k)(1) of the Act specifies that the Administrator shall consider, in addition to cost, non-air quality and other air quality-related health and environmental impacts, and energy requirements associated with achieving the required emissions reductions. Summaries of the cost, health and environmental impacts of achieving the proposed emissions reductions are presented below and are more thoroughly discussed in the Draft RIA associated with this proposal.

In addition to the VOC and toxic emissions reductions, section 211(k)(2)(A) of the Act specifies that there be no net increase in NO_X emissions (over baseline NO_X levels) resulting from the use of reformulated gasoline. The Act further specifies that if increases in NO_X emissions are unavoidable due to the control of other fuel components, other requirements may be waived or adjusted. As will be shown below, NO_X emission increases due to the use of reformulated gasoline are unlikely, and are definitely avoidable. Furthermore, the Agency believes that NO_X emission control via reformulated gasoline may be a technologically feasible and cost-effective option. EPA [4] has reviewed a National Research Council study [5] and other ambient ozone analyses and found that additional NO_X reductions would significantly reduce ozone formation in some areas. Section 211(c) of the Act gives the Agency broad regulatory authority to regulate fuel quality if the emission products of such fuels contributes to air pollution.

Under section 211(c), the Agency must consider the effects of the emissions on public health, considering scientific data and other factors, including technological feasibility. Additionally, the fuels which may be used as substitutes may not endanger the public health or welfare more than the original fuel. Because any fuel producing a net reduction in NO_X emissions would also have to meet the above performance standards for VOC and toxics emissions (i.e., will qualify as a reformulated gasoline), EPA does not expect that a reformulated fuel subject to NO_X control could endanger the public health more than a fuel which is not subject to NO_X control. Therefore, EPA is proposing a NO_X emission reduction standard of 0 to 15.3 percent in connection with the Phase II standards to further reduce ozone formation during the high ozone season. EPA requests comments on the need for NO_X emissions control in reformulated gasoline areas and on the use of its authority under section 211(c) to add NO_X control to the reformulated gasoline program.

B. Determination of Proposed Standards

The proposed emission reduction standards and their development are discussed below. The proposed standards are based on EPA analyses of the costs and emission reductions, particularly the cost effectiveness, associated with changes in different fuel components.

1. Methodology

The methodology for determining the cost effectiveness of fuel component changes is described in the Draft Regulatory Impact Analysis (RIA). Individual fuel component control costs and the effects of changes in one fuel component on the other fuel components are integral parts in the determination of the cost effectiveness of an emission control strategy. In this analysis, these two integral parts were estimated from the results of refinery modeling performed by Turner, Mason and Company (for the Auto-Oil Economics group) and Bonner & Moore Management Science (for EPA) and on survey results presented by the California Air Resources Board (CARB). Comments on the use of these studies for estimating individual fuel component control costs and coincident fuel component effects are requested.

Individual fuel component control costs include operating costs and annualized capital costs. EPA believes it is reasonable to base the proposed Phase II standards on cost effectiveness, which EPA defines here as the ratio of the incremental cost of a control measure to the incremental benefit, e.g., tons of VOC or NO_X emissions reduced or number of cancer incidences avoided. The use of cost effectiveness allows for the relative ranking of various control strategies so that a specified environmental goal can be achieved at minimum cost. EPA also evaluated the overall cost of the proposed standards to ensure they would be reasonable.

All emission reductions for Class C area are calculated relative to the statutory baseline per the requirements of the Act and all emission reductions for Class B areas are calculated relative to a fuel with an RVP of 7.8 psi and statutory baseline levels for all other parameters. As for Phase I reformulated gasoline, all Phase II reformulated gasoline must have at least 2.0 weight percent oxygen and maximum 1.0 volume percent benzene. The cost of these requirements is not accounted for in the determination of the incremental cost effectiveness of the Phase II standards (though the Draft RIA does contain updated costs for each of these two mandated controls). The cost effectiveness of incremental changes in fuel components is, thus, determined relative to the statutory baseline and the mandated reformulated gasoline requirements. EPA requests comments on the methodology used in determining the cost effectiveness of fuel component changes and on the individual fuel component control costs. Additional fuel component control cost data is also welcome.

[4] Lindhjem, C. TBA, 1992.

[5] "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Research Council, December 18, 1991.

2. VOC and NO_x Control

a. Control Costs. The total cost (as manufacturing cost) of producing a reformulated gasoline is the sum of the capital recovery cost and the operating cost. In determining the cost of fuel changes for VOC and NO_x control, EPA assumed that, because VOC control is mandated only during the high ozone season, the length of which was described in the NPRM and SNPRM, operating costs of changes made to produce reformulated gasoline would only occur in the summer and not in the winter, in effect, idling any process units built especially for the purpose of meeting the reformulated gasoline program emission requirements. However, capital costs would have to be fully recovered regardless of whether the equipment was used seasonally or not. EPA adjusted the capital costs accordingly, and used the sum of the adjusted capital cost and the original operating cost as the individual fuel component control cost in the VOC and NO_x cost-effective analyses. An example of the individual fuel component costs and the associated incremental percent reduction in VOC emissions are shown for Class C areas in Table VI–1.

Complete information on the development of the individual component costs for both Class B and C areas is provided in the Draft RIA. As will be discussed under the section on toxics control, in its estimate of the cost effectiveness of toxics control, EPA did not adjust the capital cost portion of the individual fuel component control costs as described above because toxics reductions are required year-round. Comments on the costs presented in Table VI–1 and on their derivation are requested, as well as additional fuel component control cost data and supporting description.

TABLE VI–1.—CLASS C COMPONENT CONTROL COSTS AND VOC EMISSION REDUCTIONS

Component	Control level	Incremental cost (¢/gal)	Cumulative VOC reduction (%)
Oxygen	2.0 wt%	[1] 1.67–3.36	9.0
Benzene	1.0 vol%	0.69	9.0
RVP	8.1 psi	0.57	17.6
RVP	7.4 psi	1.87	28.3
Sulfur	169 ppm	0.36–0.57	28.4
Oxygen	2.7 wt%	[1] 0.58–1.16	28.5
Olefins	5.0 vol%	1.81–2.44	30.2
Sulfur	50 ppm	1.45–1.89	31.3
Aromatics	20 vol%	0.81–0.98	31.4

[1] Based on MTBE. Ethanol use is expected to be less expensive under the provisions of section II.

b. Cost Effectiveness. In this analysis, the incremental cost effectiveness of an emission control obtained through fuel modifications is the ratio of the cost of a fuel component change to the additional reduction in emissions that occurs because of that fuel change. In determining the emission reductions and the associated cost effectiveness of VOC and NO_x standards, EPA employed a convention typically used in estimating the benefit of both mobile and stationary source VOC controls. This convention requires the determination of cost effectiveness on the basis of annual tons of VOC reduced. Thus even though VOC emission reductions reduce ozone formation only during the high ozone season, the convention is to calculate the cost of the fuel component control per ton of VOC removed as if the high ozone season emission reductions were obtained over the whole year.

EPA is proposing a range of VOC standards and NO_x standards based on particular combinations of fuel component controls which reduce VOC (and VOC plus NO_x) emissions at a cost of less than $5,000 and less than $10,000 per ton, respectively. EPA believes that these ranges represent the upper limit of costs which will be incurred by many ozone nonattainment areas in achieving attainment. EPA requests comments on the appropriateness of these limits. The combination of fuel components on which the proposed standards are based are, however, just one of many fuel formulations which could be used to achieve the standards. It must be stressed that the proposed standards are performance standards which may be met by the refiner's choice of fuel component controls.

Normally, use of these cost per ton limits would determine the depth of RVP controls projected for Class B and C fuels. However, limited RVP control cost data below 7.2 psi prevented the determination of RVP levels which exceeded the cost-effectiveness limits. Instead, EPA based the proposed Phase II standards for Class B areas on a range of RVP levels of 6.5–7.2 psi. For Class C areas, the proposed standards are based on RVPs of 6.5–7.4 psi which result in the same nonexhaust VOC emissions in Class C areas as the range of Class B RVPs do in Class B areas.

Comments are requested on the level of RVP control in each class which is reasonable for use in setting the Phase II standards.

c. VOC and NO_x Standards. Based on the complex model and the refinery modeling studies described above, EPA has found that the VOC performance standards listed in row A of table VI–2 could be met under the various RVP and cost per ton limits.

TABLE VI–2.—PROPOSED STANDARDS FOR PHASE II REFORMULATED GASOLINE

[Percent reduction in emissions]

	Cost effectiveness <$5,000 per ton		Cost effectiveness <$10,000 per ton	
	Class B[1]	Class C	Class B[1]	Class C
A. VOC standard	18.5–25.6	25.3–25.3	22.1–30.1	28.5–38.2
B. NO_x standard	6.3– 7.5	6.3– 7.8	14.0–15.0	14.0–15.3
C. VOC standard w/NO_x std	19.7–27.7	25.4–34.0	25.5–33.0	31.2–38.8
D. Toxics standard from VOC std	16.9–21.5	25.4–28.4	23.9–26.9	30.4–32.7

[1] Class B standards relative to a Clean Air Act base fuel with RVP at 7.8 psi.

EPA is also proposing a range of NO_x standards for comment. The lower end of this range is a year-round zero NO_x increase, as required by section 211(k)(2)(A) of the Act. In addition, under its authority provided by section 211(c) of the Act, the Agency is proposing a range of NO_x reduction standards to further reduce ozone formation. The range under consideration for the stringency of the NO_x standards (i.e., NO_x emission reduction requirements) is zero up to those shown in row B of table VI–2. As for VOC, the NO_x emission controls would apply only during the high ozone season.

These NO_X reductions are possible for a cost ranging from less than $1,000 per ton of NO_X, to as high as $5,500 per ton of VOC plus NO_X. EPA has found that the costs of other NO_X control programs range from $300 to $6,000 per ton of NO_X. Comments are requested on the cost-effectiveness limit to be used in determining the appropriate level of NO_X control here.

The additional fuel component changes which yielded the proposed NO_X standards also further decreased VOC emissions. While these fuel component changes were not cost effective when based solely on VOC control, they are cost effective using the $5,000 and $10,000 per ton of VOC plus NO_X targets. The VOC standards achievable within these cost-effectiveness limits when both VOC and NO_X control are considered are shown in row C of table VI–2. Comments are requested regarding whether EPA should promulgate the more stringent VOC standards of row C if it also implements the NO_X standards of row B or whether the slightly more relaxed standards contained in row A should be required.

Regardless of whether the VOC standards are based on those of Rows A or C, the addition of a NO_X performance standard would further restrict refiners' flexibility in producing qualifying fuels. EPA therefore requests comments on an option whereby the VOC performance standards shown in row A of table VI–2 would be relaxed even further if a NO_X reduction standard was promulgated. This decision would be based on the premise that NO_X emissions reductions were more important for ozone control than VOC reductions and that the acceptable cost of VOC reductions should be lower than those considered in table VI–2. Comments are also requested on granting refiners the option to trade off VOC and NO_X control within fixed limits on either standard and on whether the trade-off should be one for one (in percentage reduction terms) or on some other basis.

As an additional alternative to EPA setting a single NO_x reduction standard for all reformulated gasoline, EPA requests comments on an option whereby areas covered by the reformulated gasoline program would be permitted to choose between a VOC-reducing and a VOC and NO_x-reducing reformulated gasoline. This decision could be made by each state based on detailed air quality analyses of their individual ozone nonattainment problems. A potential problem with this option is that it would require the production of another type of gasoline in one or more grades. Distribution problems and complications already expected with implementation of the reformulated gasoline requirements could increase. Comments are requested regarding benefits or drawbacks to providing optional NO_x emission reduction standards.

3. Toxics Control

a. Control Costs. As discussed above, in determining the cost of fuel changes for VOC and NO_x control, EPA adjusted the capital cost portion of the individual fuel component control costs to account for the fact that VOC and NO_x control are necessary only during the high ozone season. Toxics emissions, however, must be controlled year-round and, thus, no adjustment is needed for capital costs already amortized on an annual basis. The individual fuel component costs shown in table VI–1 for VOC and NO_x control are, thus, higher than those used in the determination of the cost effectiveness of toxics emissions control.

b. Proposed Toxics Standard. Fuel controls for the sole purpose of reducing toxic emissions are not very cost-effective. Acceptable costs are typically between $1 and $10 million per cancer incidence reduced. However, based on the fuel component control costs used in this analysis, EPA estimates that fuel modifications for the control of toxics emissions would cost over $100 million per cancer incidence reduced.

At the same time, the control of fuel components to reduce VOC emissions also results in average reductions of toxics emissions of 17–33 percent, as shown in row D of table VI–2. However, EPA believes that Congress intended this program to provide fuel producers flexibility to produce a variety of complying fuel reformulations. While these toxics reductions would presumably be free since they would result from VOC and NO_x controls, in this case, they would also automatically occur with or without a regulatory standard. If it were more economical for a particular refiner to use fuel modifications to meet the VOC and NO_x standards which did not produce this degree of toxics reduction, then that refiner would be faced with controlling toxics explicitly, which appears to not be cost-effective. Thus, while a toxics performance standard greater than the 25 percent level specified in section 211(k)(3)(B)(ii) of the CAA is feasible, it would not be cost effective and EPA proposes setting the standard at 25 percent. Section 211(k)(3)(B)(ii) of the CAA also permits EPA to reduce the toxics performance standard below 25 percent to as low as 20 percent considering the cost of achieving such reductions in toxic emissions. The same arguments expressed above for not requiring greater than a 25 percent reduction are equally applicable below 25 percent. Thus, EPA also proposes as a second option that the toxics performance standard be set at the 20 percent minimum level specified by section 211(k)(3)(B)(ii) of the CAA. Comments are requested on this standard and the decision to not require a greater toxics performance standard of the magnitude shown in row D of table VI–2.

4. Technological Feasibility

Per the requirements of the Act, the technological feasibility of producing fuels which would meet the proposed standards must be considered in establishing the standards. EPA believes that the refinery modeling results, from which the fuel component control costs were estimated, provide the justification for the feasibility of the proposed fuel component changes. The refinery models utilized only well-developed, demonstrated, commercially available technologies, and hence will only produce fuels within the limits of these technologies. In all likelihood new technologies will be developed between now and the year 2000 which will reduce the costs for certain types of fuel component changes. Thus, EPA believes that the determination of fuel component control costs using the results of such models is reasonable and that the feasibility of producing such emission-reducing fuels is justifiable.

A key exception to this is the production of fuel with RVP below 7.2. EPA is in the process of conducting refinery modeling to assess this. Upon completion, the results will be placed in the docket to this rule.

Because the standards proposed today will not take effect until the year 2000, EPA does not believe that lead time issues should present problems to reformulated gasoline producers in achieving the proposed reductions, as all the processes needed to produce complying fuels are already commercially available.

EPA has evaluated both driveability and safety concerns associated with the use of low RVP fuels and found no significant negative impacts. These issues are addressed in the Draft RIA. Comments are requested on potential technological barriers to achieving the proposed VOC, NO_x and toxics emissions reductions.

VII. Enforcement Provisions

A. Introduction

This section of today's proposal addresses enforcement topics that result from inclusion of the complex model in the reformulated gasoline program. In addition, it addresses several enforcement topics that were the subject of the April 16, 1992 SNPRM (57 FR 13416), but that EPA now believes merit re-proposal as a result of comments received on the SNPRM. EPA's approach has changed as a result of these comments and EPA believes an additional opportunity for comments on its current approach is warranted. The regulatory text being placed in the docket to accompany today's proposal includes new regulatory language for these re-proposed topics.

These topics include: Changes to the gasoline quality survey necessitated by the possibility of gasolines that were certified under the simple model and under the complex model being present in a covered area at the same time; the inclusion of a ratchet of the minimum oxygen content standard based upon gasoline quality survey results; provisions for waiving certain enforcement mechanisms for gasoline produced under the State of California's reformulated gasoline program; and modification of the attest engagement requirements to allow use of internal auditors under certain circumstances.

EPA intends to respond in the final rule to other comments made on the SNPRM, and in many cases EPA intends to make the change suggested by the commentor. Where EPA intends to make such other changes, EPA does not believe the changes are so different from the SNPRM that reproposal is necessary. These changes therefore are excluded from today's proposal, including the accompanying regulatory text. As a result, commenters to the SNPRM should not view omission from today's proposal or accompanying regulatory text of an EPA reaction to a particular SNPRM comment to be indicative of EPA's intentions regarding that comment.

B. VOC Emissions Performance and Oxygen Standards Under the Simple Model

Section 211(k)(2)(B) of the Clean Air Act requires that, with certain exceptions, reformulated gasoline must contain at least 2.0 weight percent oxygen. Section 211(k)(7) allows for oxygen credits for reformulated gasoline containing greater than 2.0 weight percent oxygen, and for the transfer and use of oxygen credits within the same nonattainment area to the extent such credits would not result in a lower average oxygen content than would occur in the absence of any credit use. Section 211(k)(3) sets a performance standard for VOC emissions.

As a result of comments received in response to the simple model SNPRM, EPA is proposing certain changes to the approach proposed under the simple model for ensuring that the averaged standards for VOC emissions performance and oxygen content are met. These changes include a direct survey measure for VOC emissions performance, and an annual oxygen survey with adjustments for the oxygen minimum. These proposed changes are unrelated to the complex model.

In the simple model SNPRM, EPA proposed a gasoline quality survey mechanism for ensuring that the average VOC emissions performance of reformulated gasoline in each covered area would at least equal the per-gallon standard. The purpose of compliance surveys is to ensure that refinery/importer averaging achieves the same compliance on average with the reformulated gasoline standards as covered area averaging, and thus does not result in poorer air quality than would have otherwise occurred with covered area-based averaging or with straight per-gallon standards. See SNPRM at 57 FR 13462. The gasoline quality survey is described in the simple model SNPRM at 57 FR 13459–13464, and certain changes to the survey are discussed later in this section of the preamble. EPA seeks comment on the burden this area-by-area averaging scheme would impose on the regulated community.

At the time of the SNPRM, there was no appropriate equation for measuring VOC emissions performance directly. As a result, under the simple model survey proposal, surveys conducted during the high ozone season would monitor average levels of RVP and oxygen content, the parameters through which compliance with the VOC emissions is based.[6] Under this simple model proposal, if a survey result showed an average RVP level above (or worse than) the per-gallon standard for RVP, the averaged RVP standard and the maximum per-gallon RVP standard would each be adjusted to be more stringent. In the case of oxygen under the simple model proposal, however, there would be no adjustments to the averaged oxygen standard. Instead, in the event the survey results showed an average oxygen content of less than 2.0 weight percent, the average and maximum RVP standards would become more stringent. See discussion at 57 FR 13458–13459.

Several commenters to the simple rule SNPRM stated that it would be more appropriate to apply survey measures of RVP and oxygen to a VOC emissions performance equation, rather than to survey for RVP and oxygen separately. If the results of this equation indicate inadequate VOC emissions performance, according to these commenters, it would be appropriate to adjust the averaged and maximum simple model standards for RVP. Because a suitable equation for measuring VOC emissions performance is available now, EPA agrees that this suggestion would more directly ensure compliance with the VOC performance standard.

For these reasons, EPA is proposing that each survey conducted during the high ozone season would include measurement of RVP and oxygen, and that these two parameters would be applied to a VOC emissions reduction equation for each sample collected. The average VOC emissions reduction would then be calculated for all samples collected during the survey. The standard against which this result would be measured would be calculated by applying to the same VOC emissions reduction equation. In the event the survey result is less than the calculated standard, the averaged and maximum standards for RVP would be adjusted to be more stringent for the city.

This proposal for monitoring the average VOC emissions reduction standard creates the possibility that the VOC standard could be satisfied for a particular survey, with an oxygen content below 2.0 weight percent. One commenter suggested an approach to address this concern that compliance with the statutory minimum oxygen content be ensured. Under this suggestion, compliance with the statutory requirement for 2.0 weight percent oxygen would be evaluated by determining the average oxygen content of all samples collected during all surveys during a calendar year. If this average falls below 2.0 weight percent, the minimum oxygen content standard would be adjusted to be more stringent.

EPA agrees with this suggestion, and is proposing that the average oxygen content of all survey samples collected in each covered area during each calendar year would be calculated. If this average oxygen content falls below

[6] Although under the simple model sulfur, T90, and olefins also were known to affect VOC emissions performance, the average standards for these parameters are each refiner's or importer's 1990 average levels. As a result, compliance with these parameters would be based upon the total reformulated gasoline produced by each refiner or imported by each importer (or, in some cases, produced at each refinery), and could not be the subject of the gasoline quality surveys.

2.0 weight percent for any covered area, the minimum oxygen standard for that covered area would be adjusted to be more stringent.[7]

C. Compliance Survey Under the Complex Model

EPA is proposing certain changes to the compliance survey requirements that were proposed in the SNPRM.[8] These changes are necessary to enable the compliance surveys to function during the period prior to the date the complex model becomes mandatory, when regulated parties have the option of certifying reformulated gasoline under the simple model or the complex model.

During the period that begins on January 1, 1995, and lasting until the date the complex model becomes mandatory, refiners and importers would be able to certify reformulated gasoline using either the simple model or the complex model. This results in the potential for both "simple model reformulated gasoline" and "complex model reformulated gasoline" to be present in any covered area at any time, up until the date that only use of the complex model will be allowed. This potential mixture of simple and complex model reformulated gasolines creates difficulties for the gasoline quality surveys.

For example, under the simple model, reformulated gasoline meets the VOC emissions performance requirements based upon a VOC emissions performance equation that requires input of values for RVP and oxygen. Under the complex model, on the other hand, reformulated gasoline meets the VOC emissions performance requirements based upon the results of a more complex equation that requires inputs of several additional parameters, including sulfur, aromatics, olefins, T–50, and T–90. As a result, any particular reformulated gasoline certified under the complex model conceivably could meet the VOC emissions performance standard of the complex model, yet fail the requirements of the simple model. Conversely, any particular reformulated gasoline certified under the simple model could have RVP and oxygen levels that satisfy the simple VOC equation, yet as a result of the levels of other parameters included in the complex model VOC equation violate the VOC emissions performance standard when using the complex model.

Similarly, toxics emissions performance under the simple model would be a function of a gasoline's oxygenate type and content, and its benzene content, while under the complex model toxics emissions performance would be a function of benzene, oxygen, sulfur, aromatics, olefins, T–50, T–90, and RVP. Based upon the same logic described above for VOC emissions performance, a sample of reformulated gasoline that meets the toxics standard under the simple model may not meet the toxics standard under the complex model, and vice versa.

In order to avoid being confounded, therefore, for the gasoline quality surveys, EPA must use the simple model to evaluate reformulated gasoline certified under the simple model and must use the complex model to evaluate reformulated gasoline certified under the complex model. Moreover, mixtures of reformulated gasolines that are certified using the simple model and those that are certified using the complex model would not be susceptible to a survey analysis based upon either the simple or the complex models.

For the foregoing reasons, EPA is proposing a mechanism that would allow the collection of samples of gasoline that are comprised only of either simple model-certified gasoline or complex model-certified gasoline. This proposed mechanism would include the designation by refiners or importers of all reformulated gasoline as being certified using either the simple or the complex model; the mandatory segregation of these two categories of reformulated gasoline at all points in the gasoline distribution system from the refinery or import facility through the terminal from which gasoline is transported to retail outlets; and the retention at retail outlets of product transfer documents for the most recent deliveries of gasoline, to enable survey sample-takers to know if the gasoline being sampled is simple model, complex model, or a mixture of the two. EPA seeks comment on whether the above-described proposed tracking requirements would obviate the need for surveys because refiners or importers would be creating an adequate paper trail for gasoline.

Under EPA's proposal, the survey requirement would be satisfied if complete representative surveys are conducted of each category of reformulated gasoline being sold in each city subject to survey. That is, if both simple and complex model-certified gasoline is being sold in a city that is subject to the survey requirement, a set of representative samples must be collected of the simple model-certified gasoline, and a set of representative samples of the complex model-certified gasoline. If only simple or only complex model-certified gasoline is being sold in a city, however, a single set of representative samples would satisfy the survey requirement for that city.

EPA believes that in the case of a city in which both simple and complex model-certified gasoline is being used the portion of gasoline in one of these categories may be so small that, in spite of good faith efforts to collect gasoline in both categories, collection of a set of representative samples of gasoline in that category would be infeasible. In such a case, EPA is considering whether it would be adequate to permit a regulated party (or group of parties) that is conducting the survey would be able to petition the Administrator to accept the survey as complete, even though a set of representative samples was collected only of one category of gasoline. EPA seeks comment on this issue.

In the SNPRM (57 FR 13459) EPA proposed that the consequence of failure to submit a survey plan to the Administrator would be that only per-gallon standards would be allowed for all gasoline sold within the covered area for which the survey requirements were not met, and that the consequence of failure to properly carry out a survey plan would be that the surveys not properly carried out would be deemed to have been failed. These consequences also would apply for failure to submit or properly carry out the survey requirements regarding mixtures of simple and complex-model certified gasoline.

D. California Enforcement Exemption

On September 18, 1992, the California Air Resources Board ("CARB") adopted regulations for its Phase 2 reformulated gasoline program.[9] These regulations establish a comprehensive set of gasoline specifications designed to achieve maximum reductions in

[7] The general standards adjustment approach proposed in the simple model SNPRM, for making standards more and less stringent (57 FR 13462), would be followed for adjustments to the oxygen minimum standard. Failure of the oxygen survey in any year would result in an increase in the oxygen standard of 0.1 percent. After five years of survey failure, the adjusted oxygen standard would be equivalent to the per-gallon oxygen standard (2.0%). Note that an area may accomplish a one-time readjustment (decreasing the standard by 0.1%) under the oxygen standard by passing all oxygen content surveys during two consecutive years.

[8] The compliance surveys are discussed in the SNPRM at 57 FR 13458–13464. Except to the extent described in today's proposal, the compliance survey requirements that are proposed for the SNPRM would apply under today's proposal.

[9] New sections 2260 through 2272 and 2298, and amended sections 2250, 2251.5, 2252 and 2296, of Title 13, California Code of Regulations.

emissions of VOCs, NO_x, CO, sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles.

The California Phase 2 reformulated gasoline regulations establish standards for eight gasoline characteristics—sulfur, benzene, olefin, aromatic hydrocarbons, oxygen, RVP, T–90 and T–50—applicable starting March 1, 1996. The regulations also provide for the certification of alternative gasoline formulations based on vehicle emission testing.

The standards for the six characteristics other than RVP and oxygen content include two tiers—an absolute limit ("cap") that will apply to gasoline throughout the distribution system (including alternative formulations), and a more stringent standard that will apply to gasoline when it is initially supplied from the producer or importer (gasoline qualifying as an alternative formulation will be exempt from this more stringent standard). For these six characteristics, producers and importers will have two options for complying with the standards applicable to their gasoline when it is first supplied—they can choose either a "flat limit" or a more stringent limit that can be met on average through a "designated alternative limit" process.

The RVP standard of 7.0 psi applies during summertime control periods[10] to all gasoline throughout the distribution system, including gasoline certified as an alternative formulation. The oxygen content standards consist of a cap applicable to all gasoline (1.8% minimum and 2.7% maximum) and a flat limit for producers and importers (1.8% minimum and 2.2% maximum). The designated alternative limit option does not apply to the oxygen standards. Other standards apply on a year-round basis.

In enforcing the Phase 2 reformulated gasoline program, CARB has stated that it intends to maintain the strong enforcement presence we have developed over the more than 20-year period we have been enforcing ARB motor vehicle fuels regulations. The ARB's Compliance Division currently uses four full time persons to inspect fuel facilities, including service stations, terminals, and refineries. They presently take roughly 2300 samples a year, on a year-round inspection schedule.[11]

CARB tests most of its fuel samples in a mobile fuels/toxics laboratory, which can be set up anywhere in the State within 12 hours, resulting in "a substantial increase in the number of gasoline samples taken by ARB inspectors and the number of analyses that have been performed."

Section 43016 of the California Health and Safety Code provides a penalty of $500 per vehicle for violations of CARB reformulated gasoline and other fuels regulations by parties in the gasoline distribution network. To help assure the applicability of these "per vehicle" penalties to upstream parties, the Phase 2 reformulated gasoline regulations provide that each retail sale of gasoline for use in a motor vehicle, and each supply of gasoline into a motor vehicle fuel tank, is also deemed a sale by any person who previously sold the fuel in violation of the reformulated gasoline standards.

EPA is proposing that the producers of certain gasoline that is produced and sold in the State of California under the California Phase 2 reformulated gasoline program ("California gasoline") would be exempt from certain enforcement provisions proposed in today's notice and in the SNPRM. EPA is including this exemption proposal because EPA believes that the standards for California gasoline are as stringent as, or more stringent than, the proposed content and performance standards for federal reformulated gasoline. EPA also believes that the enforcement mechanisms that will be employed by the State of California are sufficient to ensure that producers of California gasoline will in fact meet the California reformulated gasoline standards. As a result, EPA believes it is appropriate to rely on the California reformulated gasoline program to ensure compliance with the federal reformulated gasoline standards by producers of California gasoline.

EPA is not proposing that producers of California gasoline would be exempt from the federal reformulated gasoline standards, only that these producers would be exempt from certain enforcement requirements designed to demonstrate compliance with the federal reformulated gasoline standards.

Although, for purposes of brevity, the discussion in this section is couched in terms of "refiners" that produce gasoline in the State of California for sale in that State, the discussion applies equally to importers that import gasoline produced outside the United States into the State of California, and to oxygenate blenders in the State of California. As discussed more fully below, refiners who produce gasoline in other states and ship it into California would not be covered by the proposed exemption. California refiners who produce gasoline for sale outside the State would also not be covered by the proposed exemption for such "non-California" gasoline.

1. Comparison of California and Federal Reformulated Gasoline Standards

EPA has compared the properties of California gasoline to the properties of federal reformulated gasoline, and the VOC, toxic, and NO_x emissions that result from both the California and federal reformulated gasoline. Table VI.1 contains estimates of the emissions that are expected to result from California and federal reformulated gasoline (on both a per gallon and averaged basis), and a comparison of estimated emissions changes from Clean Air Act base fuel. Because some of the California standards are at, or outside, the range of the EPA model, the estimates for California gasoline are not as reliable as those for gasoline meeting federal standards.

[10] In the federal reformulated gasoline areas, San Diego and Los Angeles (the San Diego and South Coast Air Basins), the RVP control period is April 1 through October 31.

[11] January 14, 1993, letter from James B. Boyd, Executive Officer of CARB, to Mary T. Smith, EPA Office of Mobile Sources.

TABLE VII–1.—COMPARISON OF CALIFORNIA GASOLINE WITH FEDERAL REFORMULATED GASOLINE (VOC-CONTROL REGION 1)

Fuel parameters	CAA base fuel	Cal. phase 2[1] (per-gallon)	Cal phase 2 (averaged)	Fed phase 1 (per-gallon)	Fed phase 1 (averaged)
Oxygen (wt %)	0	2	2	2	2.1
Sulfur (ppmw)	339	40	30	339	339
RVP (psi)	8.7	7	7	7.2	7.1
T50 (F)	218	210	200	218	218
T90 (F)	330	300	290	330	330

TABLE VII–1.—COMPARISON OF CALIFORNIA GASOLINE WITH FEDERAL REFORMULATED GASOLINE (VOC-CONTROL REGION 1)—Continued

Fuel parameters	CAA base fuel	Cal. phase 2[1] (per-gallon)	Cal phase 2 (averaged)	Fed phase 1 (per-gallon)	Fed phase 1 (averaged)
Aromatics (vol%)	32	25	22	28.2	28.2
Olefins (vol%)	9.2	6	4	9.2	9.2
		Absolute Emissions in mg/mile			
Exhaust VOC	416.8	334.0	318.3	384.5	383.3
Evap VOC (Class B)	860.5	384.7	394.7	441.8	418.0
Total VOC	1277.3	719.6	711.0	826.3	801.3
Exhaust Benzene	25.4	14.1	11.1	18.7	16.8
Evap Benzene (Class B)	9.7	3.2	2.5	3.5	3.1
Total Benzene	35.0	17.3	13.7	22.2	21.7
Exhaust ACET	2.1	2.0	1.8	1.8	1.7
Exhaust FORM	3.8	4.6	4.5	4.3	4.4
Exhaust 1,3 BUT	3.3	3.1	2.0	4.2	4.3
Exhaust POM	1.4	1.1	1.1	1.2	1.3
Total Toxics	46.6	28.1	23.4	33.7	33.5
		Percent change (Δ) in Emissions from CAA Fuel (VOC-Control Region 1)			
Percent Δ in Exhaust VOC		−27.3	−29.3	−14.0	−14.3
Percent Δ in Evap VOC		−54.1	−54.1	−48.7	−51.4
Percent Δ in Total VOC		−45.0	−45.6	−35.3	−38.7
Percent Δ in Exhaust Benzene		−44.3	−56.1	−26.3	−25.8
Percent Δ in Evap Benzene		−67.2	−73.8	−64.0	−67.5
Percent Δ in Total Benzene		−50.6	−61.0	−36.2	−38.1
Percent Δ in Total Toxics		−39.5	−48.8	−28.1	−28.7
Percent Δ in NO_x		−13.9	−16.8	−2.2	−2.5

[1] The California Phase 2 program provides an oxygen "flat limit" of 1.8% to 2.2%, which (as explained in the text) is likely in practice to be equivalent to "per gallon" and "averaged" standards of 2.0%. There is no designated alternative limit for oxygen.

This analysis compares California gasoline to the federal reformulated gasoline that would be sold in VOC-Control Region 1, because California is located within this VOC-control region.

In the case of VOC, toxic, and NO_x emissions performance, the California gasoline has a greater emissions performance reduction, as compared to Clean Air Act base gasoline, than the federal reformulated gasoline. This analysis thus supports the enforcement exemption that is being proposed today.

In the case of the oxygen content standards, the Agency has received assurances from CARB that the oxygen "flat limit" of 1.8 to 2.2% will in practice be equivalent to the 2.0% minimum oxygen content required by section 211(k)(2)(B) of the Clean Air Act. In a January 14, 1993, letter to EPA, the Executive Officer of CARB sets forth several reasons why CARB expects refiners to target an oxygen level of 2.0% and to produce gasoline that on average will have an oxygen content at least equal to this percentage, including:

- The reproducibility of the test method used for CARB enforcement is larger than the oxygen content range, meaning that effectively the CARB standard represents "a 2.0% requirement with a testing tolerance of 0.2 weight percent;"
- New limits on other gasoline characteristics will require fundamental changes in gasoline formulations and reliance on oxygenates to maintain current octane levels, likely resulting in refiners "blending oxygenates near the maximum end of the range to maximize the octane benefits of oxygenates;" and
- Some refiners may use the vehicle testing (or predictive model, when adopted) compliance alternative in the CARB regulations "to develop gasoline formulations which may contain oxygen levels up to 2.7 weight percent oxygen."

The Agency agrees with CARB's assessment concerning the likely effects of the oxygen content range in its Phase 2 regulations. In any case, EPA will still have the authority to sample and test California gasoline to assure that it meets the federal reformulated gasoline minimum standard of 2.0%, as well as the right to review company records to ensure that the federal standard has been met. The enforcement exemptions proposed in today's notice would not impact these basic EPA enforcement capabilities.

The Agency also believes that California's Phase 2 program will assure that the federal reformulated gasoline standards are met in each of the two cities (Los Angeles and San Diego)[12] subject to those standards, as required by section 211(k) of the Act. Both the "flat limit" and "designated alternative limit" standards in the California program are substantially more stringent than the federal standards, as shown in Table VI.1. In addition, the RVP "cap" of 7.0 psi that applies throughout the distribution network is more stringent than the federal standard, and averaging is not allowed to meet the California oxygen standard. For all of these reasons, it is very unlikely that one of the two cities will not meet the federal standards.[13] The Agency requests comments on this issue.

2. Applicability of California Enforcement Exemption Provisions

EPA is proposing that the California enforcement exemption provisions

[12] In his January 14, 1993, letter, the CARB Executive Officer stated that the State does not plan to opt into the federal reformulated gasoline program for any other nonattainment areas in the State.

[13] In addition, if the overall California "caps" result in gasoline that is at least as clean as gasoline that meets the federal standards, there would not be concerns about either or the two cities meeting federal requirements. EPA has not modeled the emissions effects of the caps, however.

would apply only to gasoline that is sold or dispensed within the State of California, and that is either produced in the State of California or is produced outside the United States and imported at an import facility located in the State of California. Gasoline that is produced at a refinery located within the United States outside California would not receive the proposed exemption, even if such gasoline is sold in the State of California.

EPA believes gasoline sold in California but produced domestically outside the State of California should meet all of the proposed federal enforcement requirements because the producer of such gasoline would be required to implement all of the federal enforcement provisions for the refinery's non-California gasoline. The incremental cost of including the California-market gasoline in the refinery's compliance program would not justify excluding this gasoline from the federal enforcement mechanisms. Additional reasons for this distinction are: The ultimate market for gasoline may not be apparent when gasoline is produced, making an exclusion for only California-market gasoline difficult to apply in practice; and the California state enforcement mechanism includes refinery inspections, which may not be possible in the case of refineries located outside the California state boundary.

Gasoline produced in California but shipped outside the State (e.g., to Nevada) would not be subject to the proposed enforcement exemption because it is not covered by the California reformulated gasoline program.[14] The Agency understands that California producers have developed means to differentiate between fuel that is subject to existing California fuels regulations and fuel that is not, for purposes of assuring compliance with the State's regulations. EPA is concerned about whether these practices are adequate to allow an enforcement exemption in regard to California gasoline produced at the same facility, and requests comments on this issue.

EPA is also concerned that a refiner that operates a refinery located outside the State of California that produces gasoline both for California and non-California markets could average very clean California gasoline with non-California gasoline, and produce non-California gasoline that is at the low-end of the average range of the federal standards. The non-California gasoline thus could easily be below the average federal standards, yet the refinery would be in compliance on average. In order to protect against this possibility, EPA is proposing that a refiner that operates a refinery outside the State of California would be required to separately exclude the gasoline that it sells in California from the refinery's compliance demonstration for federal reformulated gasoline and anti-dumping requirements. This would be in addition to demonstrating the overall compliance of all its gasoline with federal requirements.

Under today's proposal, record keeping and reporting requirements of the proposed federal anti-dumping requirements would not apply in the case of California gasoline. EPA believes that an exemption from these provisions intended to demonstrate compliance with the proposed standards for conventional gasoline is appropriate because all gasoline sold in California is included in the California reformulated gasoline rule. In other words, there is no California corollary to the federal anti-dumping requirements. As a result, gasoline that will be sold in portions of California that are outside the federal covered areas—and that would be subject to the federal anti-dumping requirements—will be required to meet the full California reformulated gasoline requirements. This feature of the California program provides certainty that gasoline sold in California that is subject to the federal anti-dumping standards will exceed these federal standards. In addition, the proposed federal anti-dumping requirements would apply to California producers shipping conventional gasoline outside the State.

There are several conditions under which the proposed California exemption would not apply, either in toto or in regard to specific parties. First, EPA believes that the exemption being proposed today should apply only so long as the California reformulated gasoline standards are at least as stringent as the federal standards for reformulated gasoline. EPA notes that the California regulations contain provisions that would allow the certification of additional, undefined gasoline formulations using a predictive model (§ 2265 of the California Phase II reformulated gasoline regulations) or vehicle testing (§ 2266 of the California regulations). EPA is concerned because it is possible that a gasoline formulation certified by the State of California under one of these alternative methods could be less stringent than the federal reformulated gasoline standards, in which case the exemption being proposed today would not be appropriate.

In order to protect against this possibility, EPA is proposing that the California exemption provisions would apply only so long as each gasoline formulation that could possibly be certified under the California program is at least as stringent as the federal reformulated gasoline standards. In the event that any formulation that is less stringent than the federal reformulated gasoline standards becomes certifiable, the entire California exemption would become null and void. If at any time EPA believes a less stringent formulation has been approved by the State of California, EPA intends to publish a notice of this conclusion and the date that the California exemption would no longer be applicable. This notice would give regulated parties a reasonable opportunity to take steps to implement the federal enforcement mechanisms that had been waived. This procedure would also be followed if the State revises its regulations to otherwise provide for less stringent standards than the federal program.

Second, the Agency is concerned that the variance provision contained in the California regulations (§ 2271 of the California Phase 2 reformulated gasoline regulations) is not entirely consistent with the federal provision dealing with the inability to produce conforming gasoline in extraordinary circumstances (§ 80.73 of the proposed federal regulations). In particular, the proposed federal provision is limited primarily to Acts of God, while the California provision is not so limited. In addition, the federal provision would require a party to make payment to the U.S. Treasury of the amount of economic benefit derived from the nonconformity, while the California provision does not require such a payment. As a result, the California exemption being proposed today does not include relief from the proposed extraordinary circumstances provision in the federal regulations. A party that, due to extraordinary circumstances, intends to produce gasoline that does not meet the federal reformulated gasoline standards thus would be required to comply with the federal extraordinary circumstances provisions, regardless of any variance obtained from the State of California. If a party obtains a variance from the State, EPA proposes that the enforcement exemption would cease to apply to that party unless or until EPA grants relief for extraordinary circumstances under § 80.73.

Third, EPA believes that the proposed California exemption provisions should

[14] Section 2260(a)(4) of the California Phase II reformulated gasoline regulations defines "California gasoline" as "gasoline sold, intended for sale, or made available for sale as a motor vehicle fuel in California."

apply only for parties that are in fact in substantial compliance with both the California and the federal reformulated gasoline requirements. The presumption that a refiner subject to the California requirements is also in compliance with the federal standards would not be appropriate in the case of a party that has violated the California or federal requirements. As a result, the Agency is proposing that a regulated party that is assessed a penalty for a violation of either the California or federal reformulated gasoline requirements would automatically be subject to the loss of its California exemption. Under the proposal, the exemption would be lost no matter whether the penalty assessment was the result of a judicial or administrative adjudication, consent agreement, or settlement agreement. A party subject to the loss of its exemption could petition the Administrator for relief, in whole or in part, for good cause. The Agency could also grant such relief on its own initiative. Good cause could include a showing that the violation for which a penalty was assessed was not a substantial violation of the reformulated gasoline regulations.

The Agency requests comments on whether it should base the loss of the California enforcement exemption for an individual refiner or importer on the basis of a judicial or administrative determination of violation rather than on the basis of a penalty assessment. EPA also requests comments on an appropriate date (e.g., 30 days after a final penalty assessment) on which the loss of the exemption would become effective, and on whether such a loss should be stayed during the pendency of a petition for relief.

Fourth, the California Phase 2 regulations allow small refiners (as defined in the California regulations) to obtain a two-year extension until March 1, 1998, to meet the specifications for sulfur, olefins, T–50, and T–90, under certain conditions. Small refiners will be subject to the same RVP, oxygen, aromatic hydrocarbon, and benzene requirements as other refiners under the California program. Because small refiners that obtain such an extension will not be required to produce gasoline that meets all the federal reformulated gasoline standards, EPA does not believe that it is appropriate to exempt such refiners from any of the federal enforcement provisions. Thus, the California gasoline exemption proposed in today's notice would not apply to gasoline produced under any small refiner extension granted by CARB.

Finally, EPA believes that the proposed California exemption should apply only during the time the federal Phase I reformulated gasoline program is in effect, i.e., until the year 2000. EPA intends to reevaluate the California reformulated gasoline program before the year 2000, and to engage in a separate rulemaking if it believes that the California enforcement exemption should be extended beyond the year 2000. That rulemaking would allow the Agency the opportunity to structure any future enforcement exemption to be consistent with both the federal and the California rules that will be in effect at that time.

3. Enforcement Provisions to Which Exemption Would Apply

EPA is proposing that subsequent to the date the California Phase 2 reformulated gasoline standards become effective, regulated parties that produce or import California gasoline and that meet the other criteria described in the preceding section would be exempt from meeting the proposed enforcement requirements dealing with compliance surveys (§ 80.69), independent sampling and testing (§ 80.70(c)), designation of gasoline (§ 80.70(d)), marking of conventional gasoline (§ 80.70(g)), downstream oxygenate blending (§ 80.72), record keeping (§ 80.74), reporting (§ 80.75), product transfer documents (§ 80.77), and antidumping record keeping (§ 80.105) and reporting (§ 80.106).

The Agency specifically requests comments on whether California gasoline should be exempt from enforcement provisions related to the renewable oxygenate program in the proposed federal record keeping and reporting regulations (§§ 80.74 and 80.75), should this program become applicable to the Los Angeles and/or San Diego areas. Such an exemption may not allow the Agency to adequately enforce this program if regulated parties are allowed to freely transfer renewable oxygenate units among areas subject to this program, as proposed elsewhere in today's notice.

EPA believes that it is appropriate to exempt producers of California gasoline from the independent sampling and testing, record keeping, and reporting provisions in the proposed federal regulations because these provisions deal solely with demonstrating compliance with the federal reformulated gasoline standards. Because the proposed exemption is predicated upon reliance on the California reformulated gasoline program to ensure compliance with the federal standards, these provisions are duplicative and therefore unnecessary. It is appropriate to include the survey provisions in the exemption because the purpose of the surveys is to adjust the federal averaged standards if surveys reveal unequal distribution of averaged federal reformulated gasoline. As discussed above, the need for such federal standards adjustments is believed unnecessary in California because it is highly unlikely that either of the two California cities in the federal reformulated gasoline program will exceed federal standards. The gasoline designation, conventional gasoline marking and product transfer document provisions are appropriate for exemption because they deal only with informing other regulated parties of the time and place of use restrictions of federal reformulated gasoline, considerations that are inapplicable within California because only reformulated gasoline may be sold for use within that State under its program.

4. Enforcement Exemption During 1995

The State of California's regulations provide that the California gasoline requirements become effective starting on March 1, 1996, fourteen months after the proposed January 1, 1995, effective date for the federal reformulated gasoline requirements. As a result, the enforcement exemption proposal described above would apply only beginning on the effective date of the California regulations. For the period prior to this date, EPA is proposing an exemption only from a more limited set of federal enforcement requirements, i.e., the proposed compliance survey and independent sampling and testing requirements (§§ 80.69 and 80.70(c), respectively).

EPA believes that it would be appropriate to exempt producers of California gasoline from the survey requirements in 1995 because the consequence of any survey failure in California—an adjusted averaged standard—would apply only in 1996, after the California program would be in effect. The Agency is concerned, however, that there would be no regulatory mechanism to assure that federal standards are met in 1995 in each of the California areas subject to the federal program since, unlike 1996 and later years, the State's program will not be in place. EPA requests comments on whether area-by-area averaging by refiners and importers, or some other tracking mechanism, should be required in lieu of compliance surveys in 1995.

In the case of the proposed independent sampling and testing requirements, EPA believes the costs associated with establishing the mechanisms and laboratory capabilities that would be necessary to implement these provisions outweigh the benefits

of having these requirements in place for only one year. In addition, in 1995 California refiners and importers would still be subject to the record keeping and reporting requirements of §§ 80.74 and 80.75, the latter of which requires batch-by-batch reporting of gasoline properties and characteristics. These properties and characteristics will have to be determined by in-house sampling and testing, and false reporting of these test results will make the reporting entity liable for both civil and criminal penalties. The Agency requests comments on the adequacy of these regulatory and statutory requirements as a substitute for independent sampling and testing during 1995.

E. Attestation Engagements

EPA is reproposing regulations governing the conduct of attestation engagements.[15] At the time of publication of the SNPRM, EPA's discussion of this topic with the regulated community and with the American Institute of Certified Public Accountants (AICPA) was not complete. There, EPA proposed several alternative methods for conducting attestation engagements.[16] Today, EPA proposes to adopt one of those alternatives and to expand upon the SNPRM by allowing the regulated community to use internal auditors in appropriate circumstances.

The regulation proposed today would apply to refiners, importers and oxygenate blenders. For purposes of simplicity, these parties are referred to collectively as refiners in this portion of the preamble.

Concurrent with the gasoline production reporting requirements proposed in §§ 80.75 and 80.108 of the proposed regulations, EPA proposes today that each refiner would be required to annually engage a certified public accountant or a firm of certified public accountants, or to commission an internal auditor to perform an agreed-upon procedures attestation engagement of the information which forms the basis of the reports required by these sections. The purpose of the engagement is to corroborate the reports submitted by the regulated party to EPA. The scope of the engagement would cover the activities of the refiner relative to the reformulated gasoline and anti-dumping requirements for the previous calendar year and which are the subject of the required reports to EPA. Further, the scope of the engagement procedures would be designed not to overlap with proposed independent sampling and testing requirements. The engagements would not verify the tested properties of specific batches of gasoline. Rather, the engagements would account for the accuracy of the designation of gasoline (*i.e.*, reformulated or conventional, VOC-controlled or not VOC-controlled, etc.) and verify that the proposed reporting requirements for downstream oxygenate blenders are being met. The engagements would also verify that the proposed reporting requirements for the renewable oxygenate program are met.

EPA proposes that each refiner be required to commission such an engagement at the conclusion of each calendar year, and that reports of the engagement be filed with EPA by May 30 of the following year. Under EPA's proposal, submission of the attestor's report would be required and failure to do so would constitute a reporting violation by the refiner.

The proposed attestation engegements are an outgrowth of EPA's experience with the lead phasedown program, which included averaging, banking, credits, and periodic reports, and for which EPA-conducted audits were an essential part. Because the reformulated gasoline program is significantly more complex than the lead phasedown program, EPA believes that attest engagements are correspondingly more important than in lead phasedown.

These engagements are not intended as substitutes for enforcement audits conducted by EPA, but are intended to serve as a means of improving compliance with the reformulated gasoline program by identifying problem areas to the regulated parties.

Such engagements would: Assure parties that the records on which they base periodic reports would be reviewed and cross-checked for accuracy by a disinterested third party, including an appropriate internal attestor (as well as possibly by EPA); lead to correction of simple arithmetic errors; aid in correcting misconceptions about regulatory requirements; and generally deter making false reports.

In addition to the attestation provisions described above, EPA is today proposing additional regulations applicable to refiners and importers subject to the proposed renewable oxygenate program. Such refiners would be required to include compliance with the additional requirements as part of their annual attestation engagement. The purpose of these additional proposed requirements is to corroborate the reports submitted by the regulated party to EPA pertaining to the proposed renewable oxygenate requirements. The scope of these additional requirements would cover the activities of the refiner relative to all transactions involving the use of renewable oxygenates in reformulated gasoline and which are subject to the proposed required reports to EPA. The engagements would account for the accuracy of records reporting renewable oxygenate use and verify that the proposed requirements for such use are met.

The proposed attestation requirements regarding the renewable oxygenate program would require the attestor to identify all batches of renewable oxygenate program reformulated gasoline supplied to each covered area. The attestor would be required to review a representative sample of records pertaining to those batches and verify that those products were properly transported to their point of dispensation for use; identify any changes in ownership or destination; compare laboratory analyses of the product before and after transportation for consistency; agree to the types and classifications of oxygenates used; and trace volumes of the product from refinery gate to the point of dispensation for use. The proposed requirements would culminate with the attestor including the results of inquiry in the agreed-upon procedures report described above.

As with the reformulated gasoline program, the attestor would continue to be obligated to exercise independent judgment in collecting information not specified in the regulations that would otherwise form a basis for the agreed-upon procedures report.

Because the renewable oxygenate program would be significantly new to the regulated community, EPA invites comment on all aspects of the proposed attest engagement requirements for this program.

1. Standards for Attest Engagements

a. Third Party or Internal Attestation Engagements. In the SNPRM, 57 FR 13492, EPA proposed that "each refiner, importer and oxygenate blender commission an attestation engagement [17] of the information which

[15] Provisions pertaining to attestation engagements were originally proposed in the Supplemental Notice of Proposed Rulemaking, 57 FR 13415, at 13492 (April 16, 1992).

[16] An attestation engagement is to be distinguished from an audit. An audit refers to a review of financial records. An attestation engagement refers to a review of other than financial records to determine whether a representation by a company is supported by internal company records. An attestation engagement is "one in which a practitioner is engaged to issue or does issue a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party." Statement on Standards for Attestation Engagements, § 100.01 (footnotes omitted).

[17] While the SNPRM discussed this proposed requirement in terms of an "audit" or "attestation

forms the basis of the reports" required by §§ 80.75 and 80.108. The SNPRM proposed that the engagements be conducted by a certified public accountant ("CPA") and proposed the standards for conducting the engagement. The SNPRM contemplated that the CPA would be independent of the refiner commissioning the engagement.

The proposed attestation standards pertained to the need for technical competence, independence of mental attitude from the regulated party's influence, due professional care, adequate planning and supervision, sufficient evidence, and appropriate reporting. The proposed standards contain a detailed description of the specific engagement requirements for each of the elements of the reformulated and anti-dumping programs which are subject to engagement review, and the records and procedures which must be included in the engagement. The records and engagement procedures which are specified are the minimum necessary for an engagement, however, and an attestor is expected to use professional judgment to devise engagement procedures to correspond with the facts of each individual engagement in light of the internal company's accounting, operating and administrative controls. The proposed regulations also provide that in the event that the specified engagement procedures are not followed for any reason, the deviation and the reason therefore must be included in the attestor's report.

EPA received significant comments objecting to the proposal that regulated parties be required to engage independent CPAs. Commentors expressed concern that to require a third party CPA would impose undue costs on regulated parties which already had in-house attestation capability. Further, commentors desired to avoid such a precedent-setting requirement. Commentors were concerned lest they be subjected to the expense of engaging third party CPAs to attest to the gamut of federal, state and local regulatory activity engaged in by the commentors.

Commentors asserted that EPA's interest in maintaining the integrity of reports would be adequately served by allowing appropriately qualified internal attestors to conduct the engagements. Commentors stated that because only larger regulated parties would be likely to employ internal attestors, such attestors would be sufficiently segregated from petroleum product manufacturing operations so as to avoid biasing influences from the subjects of the engagement. By contrast, smaller regulated parties in which there may be greater integration of company operations are less likely to employ in-house attestors and will need to commission independent CPAs to perform audits.

EPA accepts the rationale of allowing qualified internal attestors to conduct attestation engagements. EPA's concerns with the integrity of the reformulated gasoline and anti-dumping program are well-served by the proposed requirement that an in-house attestor be a member in good standing of the Institute of Internal Auditors, Inc., and completes each engagement in accordance with the Codification of Standards for the Professional Practice of Internal Auditing, which are proposed to be incorporated into the regulations by reference.

[Note: The Federal Register Document Drafting Handbook requires that each agency must submit a written request for incorporation by reference for approval from the Director of the Federal Register at least 20 days before the final rule document is submitted to the **Federal Register** for publication].

In recognition of the eventuality that the Codification of Standards may eventually be modified, the regulations propose that parties may petition the Agency to implement procedures through future rulemaking which are consistent with those modifications.

Internal engagements are subject to EPA compliance verification review. The sampling and testing requirements assure that the data underlying the engagement will be preserved sufficiently to allow EPA to verify any internal engagement. In addition, there are numerous checks and balances throughout the program (including the potential presumptive liability of downstream purchasers) to assure that internal engagements will be accurate. Finally, internal attestors are subject to civil and criminal liability under federal statutes proscribing the filing of false reports.

Accordingly, EPA proposes that the regulations permit the use of two types of attestors:

(1) Internal auditors may be used in certain situations. Many large companies have internal auditors on staff who may perform the attestation engagements required under these guidelines. Internal auditors may perform these duties provided they are Certified Internal Auditors (CIAs) or members in good standing of the Institute of Internal Auditors, Inc. (IIA). As such, the internal auditors will be required to act in accordance with the IIA's Standards for the Professional Practice of Internal Auditing. This requirement is intended to guarantee a number of things: That the internal auditor is independent of the activities being audited under these regulations; that the internal auditor is objective and proficient in his or her profession; and that the internal auditor is bound by a code of professional ethics.

(2) When internal attestors meeting the criteria discussed above are not available within the refiner's organization, an independent CPA or firm of independent CPAs must be used to perform the attestation engagement proposed with these regulations.

Whether an internal attestor or a CPA is engaged by a refiner, attestation engagements would have to be conducted in accordance with the applicable professional standards following agreed upon procedures contained in the proposed regulations. These regulations would cover a different range of services than an audit of historical financial statements. Rather, the proposed regulations involve review of non-financial records. EPA has worked closely with the AICPA and industry in establishing procedures which will accurately and efficiently provide the intended compliance information in the most cost-effective manner.

The proposed regulations would require that an attestation engagement conducted by a certified public accountant must be done in accordance with the Statement on Standards for Attestation Engagements (Am. Inst. of Certified Pub. Accountants 1991) [note: The **Federal Register** Document Drafting Handbook requires that each agency must submit a written request for incorporation by reference for approval from the Director of the Federal Register at least 20 days before the final rule document is submitted to the **Federal Register** for publication], or by an internal auditor in accordance with the Standards for the Professional Practice of Internal Auditing. The proposed regulations also include specific instructions relating to the subject areas which must be included in each attestation engagement, and the minimum records and engagement procedures which are appropriate for each subject area. Nothing in the proposed regulations would preclude a CPA from requesting assistance from a refiner's internal auditors in accordance with the Statement on Standards for Attestation Engagements. In recognition of the eventuality that the Statement on Standards may eventually be modified, the regulations propose that parties may

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engagement" interchangeably, the correct term for this procedure is an "attestation engagement."

petition the Agency to implement procedures which are consistent with those modifications.

b. Definitions. EPA has amended the proposed rule by adding a new proposed section defining terms for the purpose of attest engagements. The definitions are intended to clarify the scope and content of engagement analysis. These definitions provide the minimum scope of documents to be analyzed. EPA recognizes that many engagements may need to be adjusted on a case-by-case basis depending on the specific nature of the regulated facility. EPA anticipates that attestors will exercise their professional judgment in expanding the scope of engagement inquiry to assure the integrity of the engagement.

c. Attestation Guidelines. The proposed rule includes a brief section describing the method of selection of sample size required of attestors relative to the population of inquiry. The sample size is prescribed so as to provide a statistical confidence level of 95% in the representative character of the sample.

d. Agreed Upon Procedures for Refiners, Importers and Oxygenate Blenders. The new rule includes a specification of the minimum data to be analyzed by an attestor to comply with the attest engagement requirements. EPA recognizes that many engagements may need to be adjusted on a case-by-case basis depending on the specific nature of the regulated facility. EPA anticipates that attestors will exercise their professional judgment in expanding the scope of engagement inquiry to assure the integrity of the engagement.

e. Agreed Upon Procedures Reports. The proposed rule provides that the attestor will issue to the regulated party a certified report summarizing the procedures performed and findings in accordance with the Statement on Standards for Attestation Engagements or the Standards for the Professional Practice of Internal Auditing. In turn, the proposed rule provides that the regulated party shall provide a copy of the attestor's certified report to EPA within a specified time. EPA intends to develop standardized refiner-reporting forms as a means of enhancing uniformity and consistency in the attestation engagement and agreed-upon procedures.

VIII. Anti-Dumping Compliance and Enforcement Requirements for Conventional Gasoline

A. Introduction

Today's proposal for the anti-dumping program represents significant changes from the Supplemental Notice of Proposed Rulemaking published on April 16, 1992 (57 FR 13415) (hereinafter "SNPRM 92"). This proposal contains a dramatically different solution to the problem of accounting for blendstocks, as well as other minor changes to the SNPRM 92. To aid EPA in its consideration of the various options proposed in today's notice, as well as in prior proposals for this rulemaking, EPA invites comments on today's proposal (hereinafter "SNPRM 93"). The following is a brief summary of those changes with respect to the major provisions of SNPRM 92 and how they have remained the same or been changed in SNPRM 93:

- Regulated Parties. Under SNPRM 92 regulated parties include refiners, blenders and importers. Under SNPRM 93, the regulated parties remain the same, except for the exclusion of oxygenate blenders.
- 1990 Baseline. Under the SNPRM 92 refiners and importers were required to account for all gasoline and gasoline blendstocks in determining their 1990 baseline. Under the SNPRM 93, these parties are no longer required to account for blendstocks in their 1990 baseline except as provided under Methods 2 and 3.
- Averaging Period. Under the SNPRM 92 refiners and importers would be required to demonstrate compliance by averaging certain properties of conventional gasoline over a year long period and demonstrating compliance with prescribed standards to be discussed more fully below. Under the SNPRM 93, the averaging period is the same, except for the year that the Complex Model becomes mandatory in which two separate averaging periods would apply.
- Compliance Standards. Under the Simple Model standards in the SNPRM 92, refiners and importers would be required to demonstrate on an annual basis that average exhaust benzene emissions of conventional gasoline do not exceed the refiner's or importer's 1990 baseline for exhaust benzene emissions, and that sulfur, olefins and T90 do not exceed 125% of their average 1990 baseline levels. Under the SNPRM 93, the Simple Model standards remain the same; under the optional use of the Complex Model (see further discussion below), annual average levels of exhaust benzene emissions would not be allowed to exceed the refiner's or importer's 1990 average exhaust benzene emissions; and under the Mandatory Complex Model standards, annual average levels of exhaust toxic emissions and NO_x emissions would not be allowed to exceed the refiner's or importer's 1990 average levels for exhaust toxic emissions and NO_x emissions. Under SNPRM 93, recipients of blendstocks under certain circumstances would have to adjust their compliance baseline based on the volume of such blendstocks. Under both the SNPRM 92 and SNPRM 93, refiners with more than one refinery have the option of demonstrating compliance for each individual refinery or for all their refineries in the aggregate.
- Blendstocks. Under the SNPRM 92, all gasoline blendstocks would be included in baseline determination and in subsequent compliance calculations. Under the SNPRM 93, blendstocks are accounted for in compliance calculations if the blendstock to gasoline ratio in a certain year exceeds the combined ratio for 1990 through 1994 by more than 10% and certain circumstances are met to be discussed more fully below. For the purposes of establishing the blendstock to gasoline ratio only, the SNPRM 93 provides that refiners and importers will account for nine (9) specified blendstocks.
- Other Provisions. The SNPRM 93 includes a new provision which requires that parties account for all blendstocks that are transferred for the purpose of evading a more stringent baseline.
- Registration of Regulated Parties. The SNPRM 93 remains the same as the SNPRM 92, except that refiners and importers are required to supply a statement of intent as to whether compliance will be achieved on the basis of individual or aggregate refineries; and whether they will be using the Simple Model or optional Complex Model standards prior to the date that the Complex Model becomes mandatory.
- Record Keeping. The SNPRM 93 remains the same as the SNPRM 92, except the provisions have been expanded to reflect the data necessary for determining compliance under the Simple model, Optional Complex Model, Mandatory Complex Model and blendstock accounting requirements as applicable.
- Reports. The SNPRM 93 remains the same as the SNPRM 92, except for the additional requirement for refiners and importers to report the blendstock to gasoline ratio for each averaging period, and for the years 1990 through 1994 on a one-time basis.
- Company Audits. The SNPRM 93 remains the same as the SNPRM 92, except for the additional requirement of attest engagements specific to this new proposal.

Generally, the SNPRM 93 would prohibit a refiner or importer from producing or importing conventional gasoline that on average exceeds the applicable compliance standards for any averaging period. Compliance standards would be based on the properties of the refiner's or importer's 1990 gasoline. In response to the numerous comments received on the issue of blendstocks as provided in SNPRM 92, EPA has eliminated the requirement for refiners and importers to account for blendstocks in their compliance calculations except in those cases where a refiner or importer has significantly increased its production or importation of blendstocks as evidenced by an increased blendstock to gasoline ratio. This is discussed more fully in a later

section of the preamble. Refiners with more than one refinery would retain the option of demonstrating compliance for each individual refinery or for all their refineries in the aggregate. Here, as in the regulations, EPA will refer to refiners and importers with respect to the anti-dumping requirements; however, the requirements will apply similarly to individual refineries in those cases where a refiner has opted to determine compliance based on each refinery separately or a refinery with limited gasoline distribution based on certain geographic considerations as provided for in the regulations.

The SNPRM 93 has three separate standards of compliance for refiners and importers based on the Simple Model standards, Optional Complex Model standards or the Mandatory Complex Model standards. All three model standards would require refiners and importers to average certain properties of conventional gasoline and demonstrate compliance with prescribed standards which in some cases are actual fuel properties and for others are emissions characteristics calculated from specific fuel properties.[18]

Under the Simple Model standards, refiners and importers would be required to demonstrate on an annual basis, that average exhaust benzene emissions of conventional gasoline do not exceed the refiner's or importer's 1990 compliance baseline for exhaust benzene emissions, and that average sulfur, olefins and T90 do not exceed 125% of their average 1990 baseline levels. Under the Optional Complex Model standards, annual average levels of exhaust benzene emissions, as calculated under the Complex Model, would not be allowed to exceed the refiner's or importer's 1990 average exhaust benzene emissions. Under the Mandatory Complex Model standards, annual average levels of exhaust toxic emissions and NO_X emissions would not be allowed to exceed the refiner's or importer's 1990 average levels for exhaust toxic emissions and NO_X emissions, respectively. These standards implement the applicable requirements regarding the use of the Simple and Complex Models as agreed to during the negotiated rulemaking for compliance under the anti-dumping provisions.

EPA is proposing that the year long averaging period be retained since it would provide maximum flexibility for refiners and importers in meeting the anti-dumping requirements. EPA is also proposing this time period because NO_X and toxics are not a short term spiking problem that would require a short control period. Although NO_X emissions contribute to ozone, which is a seasonal problem, the anti-dumping requirements do not apply in the major ozone nonattainment areas. In addition, Phase II RVP standards provide substantial ozone reductions where required, thus mitigating any potential seasonal problem associated with a year long averaging period. Therefore, there is no significant benefit that would offset the additional compliance and reporting requirements associated with a shorter compliance period.

The proposal provides that beginning in 1995 and continuing up through the date that the Complex Model becomes mandatory, refiners and importers could determine compliance based on either the Simple Model anti-dumping standards or the Optional Complex Model anti-dumping standards, at their option. However, a refiner that produces and certifies reformulated gasoline under the Simple Model would have to comply with the Simple Model anti-dumping standards, and a refiner that certifies reformulated gasoline under the complex model would have to comply with the Optional Complex Model standards. For the period beginning with the date the Complex Model standards becomes mandatory through December 31 of that year, and for each subsequent averaging period, compliance will be based on the Mandatory Complex Model Standards. This will, therefore, create two shorter averaging periods during the year that the Complex Model becomes mandatory with different compliance standards, which will consequently reduce the flexibility of refiners and importers for meeting the applicable requirements for those periods. Although the proposal presently provides for two separate compliance periods, there are two options that exist for determining compliance during the calendar year in which there is a transition to the Complex Model. The options are as follows:

1. Two separate averaging periods with different compliance standards, (i.e. determine compliance for the period before the complex model becomes mandatory under the simple model or optional complex model; and determine compliance for the period after that date under the final complex model).

2. Average that portion of the year before the complex model becomes mandatory with the prior full year, and average that portion of the year after the complex model becomes mandatory with the subsequent full year (i.e. include early 1997 with 1996 and include later 1997 with 1998).

EPA is concerned about the serious nature of air toxics and, therefore, proposes regulation of this problem over a period no longer than a year. EPA is aware that this option reduces the flexibility of regulated parties, but believes there is sufficient lead time to achieve compliance within these time periods. We request comments on other options as well.

The SNPRM 93 provides that the anti-dumping enforcement program would consist of a combination of the following enforcement mechanisms to monitor compliance with the regulations, including: (1) Registration of regulated parties, (2) record keeping, (3) reporting, (4) company commissioned audits, and (5) Agency audits. This program remains unchanged from the SNPRM 92 except for the changes mentioned above. The Agency believes that all the mechanisms proposed are necessary because they enable the Agency to collect and review data from regulated parties to ensure compliance with the anti-dumping requirements. This belief is based, in large part, on the Agency's experience in enforcing the lead phasedown program. In that program, compliance improved dramatically when the Agency shifted from an enforcement program based merely on the review of periodic reports to one that included compliance audits. The reports submitted under lead phasedown provided the agency the data necessary to monitor refiner and importer compliance and often provided clues to potential problems. The records retained by regulated parties provided the means for agency auditors to look behind the reports submitted and ultimately identify violations. EPA audits under lead phasedown also identified more honest mistakes or oversights by regulated parties, which would likely be uncovered through company commissioned audits. Therefore, the agency believes all the above mechanisms serve a useful purpose in assuring compliance with these requirements.

B. Regulated Parties

The basic anti-dumping requirement that gasoline and gasoline blendstocks must meet standards for exhaust benzene emissions, sulfur, T90, olefins, exhaust toxic emissions and/or NO_X emissions, as applicable, would apply to refiners and importers. The terms

[18] For a discussion of issues concerning which properties or pollutants are covered in the federal anti-dumping program, see the Notice of Proposed Rulemaking, published July 9, 1991, (56 FR 31219—31222).

"refiner" [19] and "importer" [20] have been defined and applied in earlier environmental regulatory programs involving gasoline [21]. EPA proposes that these definitions continue to apply for purposes of the anti-dumping requirements.

The new anti-dumping requirement regarding the volume ratio of blendstocks produced or imported and transferred to others, would also apply to any producers or importers of blendstocks. In addition, any party that adds gasoline blendstock to gasoline [22] or who combines gasoline blendstocks to produce gasoline (i.e., a "blender") is already encompassed in the definition of a refiner, because it is producing gasoline. EPA's proposal would not reach a person who is not a refiner (i.e. a person who does not own, lease, operate, control or supervise any facility that produces gasoline) or importers of products not produced at a gasoline refinery, such as a natural gas liquid plant. Similarly, chemical products produced at a refinery or imported but not sold for gasoline blending purposes, would not be subject to these requirements.

The SNPRM 93 proposes exclusion of parties that operate only as oxygenate blenders. The SNPRM 92 also proposed that oxygenate blenders not be required to comply with the antidumping requirements. In the case of downstream oxygenate blending, both proposals require that producers or importers of the base gasoline account for the applicable properties under the anti-dumping program. The addition of oxygenates will only improve the final blended properties of gasoline under the Simple Model. Although the addition of certain oxygenates will increase exhaust NO_X emissions under the Complex Model, these emissions will be offset by reductions in VOC, toxics and CO on a mass basis. EPA believes that the net emissions impact is not of sufficient magnitude to justify the significant disruption and complexity that would be required for oxygenate blenders to comply with these anti-dumping requirements.[23] Therefore, under today's proposal such parties would not be subject to the requirements of this subpart.

C. Accounting for Gasoline Blendstocks

The preamble to the SNPRM 92 discussed at great length the anticipated problem of blendstocks being "dumped" in conventional gasoline as a result of the stringent requirements placed on reformulated gasoline (57 FR 13484). The preamble set forth the economic incentives created by the differences in baselines between different refiners including those for whom the default baseline applies, and gave an example of how the goal of preventing "dumping" could be frustrated. These differences in baseline provide a mechanism for a refiner or importer to circumvent the requirements by shipping blendstocks to be used in the production of conventional gasoline to a party that was not in operation in 1990 and for whom the less stringent 1990 Clean Air Act default baseline would apply.

During the negotiated rulemaking process it was recognized that certain segments of industry, such as downstream blenders or new refiners, could gain significant competitive advantage from the less stringent default baseline, however, there was no clear proposal to address this problem. Refiners will likely remove such components as benzene, aromatics, etc. from typical 1990 gasoline in order to meet the reformulated gasoline requirements. This will result in the extensive availability of such components in the marketplace which will then have a high potential of being "dumped" into conventional gasoline. If the cost of these components is less than the cost of gasoline, as it is likely to be, they will almost assuredly be used to produce conventional gasoline if there is no mechanism to prevent it. EPA's prior experience with both the lead phasedown and fuel switching programs indicates that a few cents wholesale price differential provides sufficient incentive to violate and would certainly encourage dumping without appropriate controls. Several parties have brought this to EPA's attention. In light of the above, EPA believes that appropriate controls are necessary. Today's proposal is an attempt to develop a program that effectively addresses this problem without imposing unnecessary costs and burdens on the regulated community.

As contrasted to the SNPRM 92, the SNPRM 93 would not require that refiners or importers account for all gasoline blendstocks that are produced or imported, and would also remove the prohibition and defenses associated with transporting, storing or containing the chemical marker required for certain blendstocks under the earlier proposal. After further review of this issue, EPA believes that accounting for all blendstocks for antidumping compliance and requiring the addition of a chemical marker for monitoring blendstocks use may be more burdensome and disruptive than necessary, without a clear indication of the need for such regulatory requirements at this time. Therefore, EPA believes that it may be more appropriate to identify a mechanism to monitor the transfer, sale and production of blendstocks as an indicator of possible dumping of blendstocks and to trigger further controls as necessary. EPA also believes that it is appropriate to propose a regulatory program now, rather than waiting until after a problem with the dumping of blendstocks is discovered. EPA also believes that it is more appropriate to limit the controls to circumstances where it is likely to be an environmental problem.

The SNPRM 93 is intended to identify potential "dumping" by a refiner or importer, and to provide a mechanism to mitigate any adverse environmental effect in such a case. Under EPA's proposal, refiners and importers would be required to determine for each averaging period: (1) The total volume of certain specified blendstocks, as defined by the proposal, produced or imported and transferred to others; (2) the total volume of conventional gasoline produced or imported; and (3) the ratio of these blendstocks to gasoline (ratio). If this blendstock to gasoline ratio for any averaging period exceeds the blendstock to gasoline ratio for the overall average of calendar years 1990 to 1994 by more than 10%, the refiner or importer would be required to exercise one of two options. The refiner or importer would be required to either: (1) Inform any blendstock recipient that they are required to adjust their compliance baseline in the subsequent averaging period based on the refiner's or importer's compliance baseline for the volume of blendstock received, or (2) account for the properties of any blendstock in its own compliance calculations for the averaging period in which the blendstocks were transferred. The recipient of blendstocks under this provision may not have notice until late

[19] "Refiner" is defined as any person who owns, leases, operates, controls or supervises a refinery," 40 CFR 80.2(i), and "refinery" is defined as "a plant at which gasoline is produced," 40 CFR 80.2(h).

[20] "Importer" is defined as "a person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States * * *," 40 CFR 80.2(r).

[21] Current regulatory programs that involve gasoline include the lead phasedown program, 40 CFR 80.20, and the gasoline volatility program, 40 CFR 80.27–28.

[22] "Gasoline" is defined as "any fuel sold in any state for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline" (footnote omitted), 40 CFR 80.2(c).

[23] The preamble to the NPRM discussed how NO_X increases from oxygenates are more than offset by decreases in VOC, toxics, and CO. See 56 FR 31220–31222.

in the averaging period that the supplier has exceeded the 10% trigger, and, therefore, it would be unreasonable to require the recipient to make adjustments until the subsequent averaging period. On the other hand, the supplier should be monitoring its own blendstock transfers continuously and should be able to make the necessary adjustments to achieve compliance during the same averaging period. Additional reporting and transfer documentation requirements associated with each option are discussed more fully below. Blendstocks transferred between refineries with a common baseline would be exempt from accounting under this requirement.

In order to further limit the application of these additional controls to only those circumstances where it is likely to be an environmental problem, the regulations exempt those refiners and importers from further controls regarding applicable blendstocks where: (1) Their blendstock production or importation is less than 3% of conventional gasoline produced or imported during the averaging period, or (2) their 1990 baseline is less stringent than the default baseline for all regulated fuel properties. EPA believes that the burden should be eased on low volume producers of blendstock where their blendstock production is not likely to adversely impact air quality. EPA believes that 3% of production is insignificant for any refiner or importer and, therefore, it would be unnecessary to even monitor changes in the blendstock to gasoline ratio at this low level. EPA seeks comments on the appropriateness of 3% as the trigger for this exemption. In addition, where a refiner's 1990 baseline is less stringent than the default baseline, there is no economic incentive to "dump" blendstocks. Therefore, EPA believes it would not be necessary to monitor blendstocks in that situation either.

Under EPA's proposal, a comparison is made between the ratio for each averaging period and the aggregate four year ratio. EPA believes that the aggregate blendstock to gasoline ratio for calendar years 1990 through 1994 would more comprehensively characterize the general use of blendstocks by a particular refiner or importer prior to the implementation of the reformulated gasoline requirements. The alternative of looking at the blendstock to gasoline ratio for any individual calendar year or, in particular, a peak ratio year, may not take into account legitimate fluctuations in the market. EPA is concerned that the use of a single peak year baseline would provide refiners and importers the opportunity to increase blendstocks in 1993 or 1994 so as to inflate the "baseline" ratio. Nevertheless, EPA invites comments on whether it is more appropriate to use an aggregate 1990 through 1994 ratio or the ratio for a single year for this purpose.

Under EPA's proposal, a 10% increase in the blendstock to gasoline ratio would trigger the additional blendstock compliance requirements. EPA is currently analyzing a substantial amount of historical data regarding blendstock production, sales and transfers to determine whether this threshold is appropriate and will make this information available for review when complete. EPA may adjust the blendstock to gasoline ratio figure accordingly, based on the analysis results. EPA believes that until that process is completed, it is appropriate to take a relatively conservative approach, in order to identify refiners or importers that attempt to circumvent the anti-dumping requirements. At present, EPA believes that the 10% figure is a sufficient threshold to allow for expected or normal fluctuations in blendstock production from year to year due to implementation of the reformulated gasoline requirements. EPA also believes this amount is small enough to reasonably identify any refiner or importer that may be "dumping" dirty gasoline blendstocks. However, we are requesting the submittal of appropriate data in this area and comments on other figures that might be more appropriate for this requirement.

In addition, EPA is proposing inclusion under this provision of only those refinery products that may have an adverse effect on the regulated parameters under the anti-dumping program. This should minimize the burden on industry by limiting this provision to monitoring those products where there is an adequate environmental justification. This represents a significant reduction from the extensive list of blendstocks provided in the SNPRM 92. However, for purposes of determining 1990 baselines under Methods 2 and 3, it is more appropriate to include a complete list of all refinery products used as gasoline blendstocks in order to properly characterize 1990 gasoline in accordance with the intent of the anti-dumping program.

EPA recognizes that blendstocks may be transferred to different parties in the distribution system, including brokers, and that there needs to be affirmative obligation to ensure proper notification of the applicable requirements to parties downstream. We have, therefore, required refiners or importers whose ratio exceeds the 10% threshold, and who follow the first option, to notify recipient parties by written notice, either stated on the transfer documents or by separate communication, that the blendstock recipient must adjust its compliance baseline for this blendstock. In addition, the refiner or importer must provide the necessary baseline data for making the adjustment. Alternatively, if the refiner or importer follows the second option, it is required to provide written notice that such blendstocks have already been accounted for in its compliance baseline and are to be excluded from the compliance calculations of any subsequent recipient. Thus, the appropriate transfer documents must convey with each transfer of blendstocks subject to these requirements. In the case of fungibly mixed products, EPA will leave it up to the parties involved to ensure that the proper notification takes place rather than prescribing detailed product accounting and notification procedures.

As stated in the SNPRM 92, the inclusion of oxygenate volume for anti-dumping compliance calculations by refiners and importers would be optional, except as required in the calculation of other exhaust emission products under the applicable model. Any refiner or importer that elects to include oxygenate volume in its compliance calculations, however, would be required to include oxygenates in its 1990 baseline determination as well.

Under EPA's proposal, gasoline and other petroleum products would be included in the anti-dumping compliance calculations only once, in order to avoid double counting of products. Thus, a refiner or importer would not include in its compliance calculations gasoline it did not produce or import or gasoline blendstocks accounted for by others. A refiner that uses blendstock accounted-for by another, would have to "back out" the properties and volume of such blendstock from the volume and properties of the final product.

EPA believes the SNPRM 93 will address the environmental implications of increased blendstock production by requiring additional controls for specified refinery products only when it appears that a significant deviation from past practices has occurred, as evidenced by a 10% increase in blendstock to gasoline ratio. In addition, under the SNPRM 93 we are including only those blendstocks that have an adverse environmental effect on the regulated parameters. The Agency seeks comments on all aspects of the above

scheme to prevent dumping and mitigate its effect as it relates to the requirements and intent of the anti-dumping program.

EPA has included an additional requirement to address situations where it is clear that a refiner or importer is transferring dirty blendstocks to a party with a less stringent baseline in order to evade the anti-dumping requirements. Under proposed § 80.102(i), a refiner or importer would be required to include in their determination of compliance any applicable blendstocks that were transferred in whole or in part to evade a baseline requirement.

The 3% and 10% blendstock to gasoline ratio thresholds discussed earlier are intended to address the majority of potential anti-dumping problems. However, EPA believes that some refiners and importers may engage in blendstock transfers contrary to the intent of the anti-dumping regulations. As a deterrent to this practice, EPA will monitor such blendstock transfers to determine if they are occurring with this motivation. In making this determination regarding the transfer of blendstocks between parties, EPA will look at such factors as: The magnitude of differences in baselines; the nature of any prior business relationship; the extent of financial incentives for transferring blendstocks; the refiner's process for the production of reformulated gasoline, i.e. which blendstocks are removed to meet the reformulated gasoline requirements; the historical corporate relationship, if any, that existed between the parties; and whether this transfer represents a departure from any prior business practices. EPA will also look to see if other means were available to the blendstock producer to achieve compliance with the anti-dumping requirements without such transactions. EPA would consider enforcement under this provision when there is compelling evidence that a regulated party is dumping "dirty" blendstocks without accounting for the blendstocks in its own compliance determination.

D. Compliance Calculations

1. Compliance Baseline Calculation

The compliance baseline calculation as discussed in the SNPRM 92 is based on the 1990 "equivalent" conventional gasoline volume (57 FR 13488). The SNPRM 93 would change the compliance baseline to reflect the receipt of blendstock from a refiner or importer that has exceeded the specified 10% blendstock to gasoline ratio, as discussed previously. The refiner or importer would be required to provide the recipient with the appropriate baseline values for making the adjustment. The blendstock recipient that must adjust its compliance baseline is required to make the adjustment in the subsequent averaging period because the producing refiner would not have notice that it activated the 10% trigger until the present averaging period was over. The producing refiner, on the other hand, has control over its gasoline and blendstock production during the year and, with proper planning, should be able to achieve compliance with such blendstocks included during the current averaging period.

2. Compliance Determination

The SNPRM 93 would expand the SNPRM 92 to include exhaust benzene emissions under the Optional Complex Model and exhaust toxics emissions and NO_X emissions under the Mandatory Complex Model. In addition, refiners that produce reformulated gasoline during 1995, 1996 and early 1997 would have to use the same compliance model for their conventional gasoline during those averaging periods. Compliance levels would be determined on average for that averaging period and compared against the applicable 1990 baseline for those parameters as calculated in a similar manner. Individual refinery compliance, composite sampling and compliance based on combining the properties of individual blendstock batches would be unchanged from the SNPRM 92.

E. Registration

The SNPRM 93 expands the registration proposal in the SNPRM 92 (57 FR 13488) to require refiners and importers to submit a statement of intent as to whether compliance will be achieved on the basis of individual or aggregate refineries, and whether compliance will be based on the Simple or Optional Complex Model for 1995, 1996, and the period prior to the date the Complex Model becomes mandatory.

F. Record Keeping

The SNPRM 93 expands the record keeping proposal in the SNPRM 92 (57 FR 13488) to include the results of tests performed to determine compliance under the newly proposed Optional Complex Model and Mandatory Complex Model standards. EPA's proposal would require refiners and importers to retain documents pertaining to any adjustment of compliance baseline required and documents which demonstrate the transfer of blendstocks.

G. Reporting

All refiners or importers of conventional gasoline would be required to submit to EPA a report within thirty (30) days following the conclusion of each averaging period which contains the following information: Total gallons of conventional gasoline produced or imported during the averaging period; average exhaust benzene emissions, sulfur, olefins and T90 if using the Complex Model, exhaust benzene emissions if using the Optional Complex Model, or exhaust toxics and NO_X emissions if using the Mandatory Complex Model, and the calculations used to derive such averages for the total volume of conventional gasoline produced or imported during the averaging period; the total gallons of blendstocks produced or imported and transferred to others for use in gasoline blending. These requirements would apply for refiners that produce conventional gasoline through the combining of blendstocks as well. The above reporting requirements would not apply in the case of any conventional gasoline or gasoline blendstock that is excluded from a refiner's or importer's compliance calculation.

In addition, EPA is proposing a one-time reporting requirement in order to establish the "baseline" blendstock to gasoline ratio. Any refiner or importer of conventional gasoline would be required to submit to EPA, by January 31, 1995, a report containing the total volume of gasoline produced and imported for each calendar year 1990 through 1994 for which such data are available, the total volume of gasoline blendstocks produced and imported, and transferred to others for each calendar year 1990 to 1994 for which such data are available, and the ratio of total blendstock volumes to total gasoline volumes. Refiners and importers would be required to follow the same protocols for determining the availability of data that are being proposed for establishing 1990 baselines.

H. Additional Procedures for Refiners and Importers of Conventional Gasoline and Blendstock

The Notice of Proposed Rulemaking included attest engagement procedures for the production of reformulated and conventional gasoline. This supplemental notice includes additional procedures as a result of the changes made in the scheme for accounting for gasoline blendstocks. These procedures would require the review of a refiner's or importer's records for compliance

with the requirements of this subpart, to include review of: (1) The relevant documents to determine the blendstock to gasoline ratio; (2) any adjustment to compliance baseline calculations; (3) application of the adjusted baseline; and (4) the refiner's or importer's quality assurance program for determining the applicable values of regulated fuel properties. This review would follow the same general criteria for sample selection and testing as outlined under the reformulated gasoline requirements. EPA is proposing attest engagement procedures for the same reasons set forth in the preamble to the reformulated gasoline requirements.

IX. Anti-Dumping Requirements for Conventional Gasoline

A. Introduction

Section 211(k)(8) of the Act requires that average per gallon emissions of specified pollutants from non-reformulated, or conventional, gasoline use must not deteriorate relative to emissions from 1990 gasoline, on a refiner or importer basis. Compliance is measured by comparing emissions of a refiner's or importer's conventional gasoline against a baseline gasoline. An individual baseline is developed for each refiner or importer based on the quality of their 1990 gasoline, although under certain circumstances the individual baseline is set at the statutory baseline. To implement this requirement, EPA has proposed requirements known as the anti-dumping provisions for conventional gasoline producers and importers. Today's proposal describes additional anti-dumping provisions as well as modifications to previously proposed provisions applicable to conventional gasoline. These are detailed in the accompanying proposed regulations, and comments are requested on any or all of today's proposal. Further background information can be found in EPA's prior proposals.

B. Proposed Requirements for Individual Baselines

1. Baseline Determination

In the SNPRM, EPA proposed a requirement for "sufficient" sampling of finished gasoline or blendstock streams, as appropriate by the methods proposed in the SNPRM. At this time, EPA believes that a minimum data requirement must be specified to ensure that enough samples are taken from which to develop a representative baseline and to minimize the picking and choosing of data. For a Method 1 determination, EPA is proposing to require that at least half of the shipments in a calendar month shall have been tested for a particular parameter. For Methods 2 and 3, EPA is proposing to require at least weekly sampling of continuous blendstock streams and, if blendstocks are produced on a batch basis, sampling of at least half of the batches of each blendstock produced in a month. EPA realizes that this proposal differs significantly from the SNPRM, but believes that such a requirement may be necessary to insure a sufficiently accurate baseline. Comments are requested as to the necessity of such a requirement, and on the minimum sampling requirements discussed above for each Method.

In the SNPRM, EPA proposed that at least three months of summer and three months of winter data must be available for the determination of a parameter value by a particular method. Insufficient data would require use of the next method down (e.g., Method 2 instead of Method 1) or collection of additional data which would necessitate a Method 3 determination. If, following promulgation of the final rule, additional data needs to be collected because the minimum data requirements specified for using Method 1, 2 or 3 for determining a fuel component baseline value (per the proposed regulations) have not been met, EPA proposes that data shall be collected through the end of the third month of the first three full months during which summer gasoline is produced by the refiner following promulgation of the final rule. The requirement to collect at least three months of data on a refiner's winter gasoline and at least three months of data on a refiner's summer gasoline would still have to be met.

In the case of a Method 1 determination, where actual 1990 gasoline shipment data is used, inconsistent sampling may have occurred causing a lack of data on one grade and abundant data on another. For example, if a refinery produced a special grade of gasoline, it may have tested each shipment of that gasoline for several fuel properties. In comparison, it may have only tested every other shipment of its typical gasoline for these same properties. Combination of all of the available data for a parameter would result in a baseline value which was skewed to the specially-produced gasoline. To minimize such skewing, and to thus get a more representative baseline, EPA proposes that average fuel parameter values be determined first for each grade of gasoline produced, and the resulting values weighted by the fraction of each grade sold in the period over which the value is determined. EPA proposes that "grade" mean each individual octane number of gasoline produced in the refinery (rounded to the nearest whole number). Comments are requested on this proposal, specifically on the ability of the proposal to minimize skewing of data, and as to whether each octane number of gasoline produced should be considered a separate grade. Comments on other "definitions" of grade for use under this proposal are requested.

EPA also requests comments on allowing a refinery's own production volumes of summer and winter gasoline (based on RVP) to be used in the weighting of data on a summer and winter basis. EPA had proposed that a national average summer/winter percentage split of 46.8/53.2 be used, which was based on gasoline consumption during the summer and winter periods. Because fuel production can lead fuel consumption by up to 2 months, EPA believes that use of refinery-specific production volumes and time periods in the baseline determination will result in more representative baselines. Comments are requested on this proposal and as to how transitions in fuel production between seasons will affect this proposal and individual baseline determination.

Testing of a refinery stream for one or more of the fuel properties for which a baseline value must be determined would be an unnecessary expense if a refiner can show that the refinery stream contains negligible amounts of one or more of certain fuel properties for which a baseline value must be determined. The properties that EPA proposes would not have to be determined under these circumstances are benzene, aromatics, olefins, saturates and sulfur. EPA proposes that the first four listed parameters would be deemed to exist in negligible amounts if they exist at less than 1.0 volume percent in a refinery stream. Sulfur would be deemed to exist in a negligible amount if it exists at less than 10 ppm in a refinery stream. Any properties shown to exist in a refinery stream in negligible amounts shall be assigned a value of 0.0. For example, EPA believes it would be generally easy for a refiner to show that MTBE and alkylate streams have negligible aromatic, sulfur and benzene contents. Comments are requested on this proposal, particularly on the levels of each parameter which would be considered negligible. Comments are also requested as to whether EPA should require criteria, and what those criteria should be, to show that negligible quantities of a parameter

exist. For example, one way to prove that one or more fuel parameters exist in negligible quantities may be to show that a stream consists of a single chemical compound (i.e., the criteria would be that the stream is 99 percent by volume pure component). Or, it may be possible to demonstrate using chemical reaction theory or general refinering practice supported by industry survey results that an alkylate stream, for example, which is a very complex mixture, still has aromatic and benzene contents of less than 1 volume percent without measuring the benzene content of the stream.

EPA previously proposed that post-1990 finished gasoline could be used in a Method 3 determination if the volumetric fraction of each blendstock in post-1990 finished gasoline was within five (5) percent of the volumetric fraction of the same blendstock in 1990 finished gasoline. However, based on comments that typical year-to-year fluctuations would cause the blendstock volumetric fractions to exceed the proposed 5 percent requirement, EPA proposes to allow post-1990 finished gasoline data to be used if each of the post-1990 blendstock fractions is within 10 percent of the respective 1990 blendstock volumetric fraction. Comments are requested as to whether the 10 percent criteria is appropriate.

In a slight change from the SNPRM, EPA proposes that the Director of the Office of Mobile Sources approve baselines and grant petitions under circumstances where petitions are allowed.

Establishment of Baselines by Foreign Refineries

EPA has received comments pertaining to the establishment of 1990 baselines by foreign refiners. The 1990 baseline is relevant in the early years of the reformulated gasoline program for purposes of certifying reformulated gasoline under the Simple Model,[24] and it is relevant from 1995 onward for purposes of measuring compliance with the anti-dumping provisions of this program.

In the SNPRM (April 1992), EPA proposed that domestic refiners establish their individual baseline using one of three proposed methods to calculate their 1990 average fuel parameters. Method 1 would be used if sufficient data was available; if not, then Method 2; or Method 3, if insufficient data was available for Method 2. EPA proposed that importers of foreign gasoline establish their baselines using the first proposed method, and that importers "default" to the statutory baseline if sufficient data was not available for that method.

EPA did not propose any methodology for foreign refiners to establish individual baselines. Rather, the quality of gasoline imported from foreign refiners was to be controlled by regulation of domestic importers. However, EPA proposed an exception to this scheme for refiners that were also domestic importers and that imported 75% of the gasoline produced at the refinery. EPA proposed that these importers be permitted to use the three methodologies for establishing an individual baseline.

The proposed approach regarding the establishment of individual baselines by foreign refineries arose from three principle concerns by EPA:

1. EPA was concerned that foreign refiners that imported less than a significant portion of their total production into the United States would be unable to produce verifiable data adequate to justify use of the three proposed methodologies. EPA did not believe that foreign refiners had records of the relevant fuel parameters necessary to accurately establish a 1990 baseline for that fraction of their total 1990 gasoline production exported to the United States.

2. EPA was concerned with its ability to conduct verification and compliance audits on foreign soil to verify the calculation of individual baselines for foreign refiners. Domestic refiners and importers are subject to regulation by the Agency, whereas regulation of foreign refiners raises significant questions on legal authority and regulatory jurisdiction. EPA's concern also extended to the effect product fungibility and mixing during shipment would have on the Agency's ability to correlate imported product with individual foreign refinery baselines.

3. EPA was concerned that permitting foreign refiners to establish individual baselines would lead to "gaming" of the system. Specifically, EPA was concerned that foreign refiners that had exported gasoline to the U.S. in 1990 that was cleaner than the statutory baseline would have economic incentives to default to the less stringent statutory standard. As a result, foreign refiners could use EPA's limited ability to auditor-verify a foreign refiner's records and intentionally default to the 1;X stringent baseline. Such "gaming" might have the effect of skewing the anticipated average quality of gasoline characteristics within the United States, especially in areas where imported gasoline is a significant percentage of the total gasoline consumption.

Petroleos de Venezuela S.A. (PDVSA) claims that EPA's first concern would be satisfied if a foreign refiner's data was sufficiently detailed such that the qualities of the 1990 gasoline exported to the United States could be determined, as compared to the qualities of the refiner's overall 1990 gasoline production. In such a situation, PDVSA claims that a foreign refiner should not be precluded from using the three methods to establish individual baselines for its refineries.

With respect to EPA's second concern, PDVSA claims that foreign refiners and their governments would be amenable to EPA conducting verification and compliance audits. This could be arranged through diplomatic instruments if necessary. With respect to EPA's concerns on reliably tracking the origin of gasoline to specific refiners and refineries, PDVSA believes that EPA could continue, if necessary, to regulate importers of foreign gasoline. A refiner's or refinery's individual baseline would follow its gasoline as long as its gasoline could be fairly tracked at the point of importation. For example, a foreign refiner could segregate its product from others, or the point of origin could be clearly traceable from the documentation accompanying the gasoline. If the point of origin could be clearly identified, then the importer would use the foreign refiner's baseline for that product's baseline. If the point of origin could not be clearly identified, then the importer would use the statutory baseline for that gasoline. In effect, the burden of clearly identifying the point of origin would be on the importer, and through them on the foreign refiner.

Finally, with respect to the gaming concern, PDVSA believes there is no significant economic incentive for such gaming as it would be economic incentive for such gaming as it would not be economic for a refiner to intentionally degrade the quality of the gasoline it exports to the United States to the statutory baseline. In addition, PDVSA claims there is no realistic chance of an adverse air quality impact from this gaming potential. PDVSA also claimed that failing to allow foreign refiners to establish individual baselines could distort the export market in a way that potentially could disrupt the supply of gasoline in certain areas of the country.

EPA invites comment on all of the above issues, including EPA's concerns and the suggestions of PDVSA. EPA also invites comments on alternatives to the approaches proposed today, including

[24] The proposed Simple Model would apply from January 1, 1995 until the Complex Model becomes mandatory during 1997.

allowing foreign refiners to establish individual baselines under reasonably limited circumstances based on the concerns noted above, for use in the reformulated gasoline program under the Simple Model and/or for use in the anti-dumping program.

2. Baseline Adjustment for Work-in-Progress

In the SNPRM, EPA proposed that a work-in-progress (WIP) adjustment to a refiner's baseline would be allowed if certain criteria were met. One of the criteria presented in the SNPRM addressed the situation where a refiner's exhaust benzene emission value differed significantly when calculated with and without the WIP adjustment. EPA believes that the WIP adjustment should also apply to the fuel components which are capped when the simple model is used, and, per the regulatory negotiation's Agreement-in-Principle, to exhaust toxics and NO_X emissions in the years when the complex model is required. EPA proposes that this adjustment apply when one or more of the following situations occur: (1) At least a 25.0 percent difference exists between sulfur, olefin and/or T90 values calculated with and without the WIP adjustment; (2) at least a 5.0 percent difference exists between the refiner's baseline exhaust benzene emissions calculated with and without the WIP adjustment; (3) at least a 5.0 percent difference exists between the refiner's baseline exhaust toxics emissions calculated with and without the WIP adjustment; (4) at least a 5.0 percent difference exists between the refiner's baseline NO_X emissions calculated with and without the WIP adjustment. Comments are requested on the extension of the WIP adjustment to sulfur, T90 and olefins. Comments are also requested as to whether the proposed 25.0 percent difference requirement is an appropriate value.

Another of the criteria proposed in the SNPRM required that a refiner show that failure to allow a WIP adjustment would result in a substantial portion of the capital associated with the WIP to be at risk. "Substantial" was proposed to be capital involved with the WIP which exceeded 10 percent of the refinery's depreciated plant and equipment value. Comments were received which stated that it is possible that this requirement could be biased against recently built or recently upgraded refineries because the depreciated value would be higher for these facilities than for older refineries of the same size. The commenter also claimed that newer facilities tend to be benefit the environment more than similar, older facilities, and thus could be unfairly penalized, compared to older facilities, by the proposal. Based on these comments, EPA proposes an alternative criteria which could be met in lieu of the "10 percent" criteria. EPA proposes and requests comments on the allowing either the "10 percent" criteria or minimum cost of the WIP to satisfy the capital-at-risk criteria. Comments are requested as to whether $10 million is an appropriate minimum cost.

Because WIP was not previously clearly defined, EPA proposes that WIP include both projects actually under construction in 1990 and projects for which contracts were signed in 1990 such that construction would be completed in time to comply with the regulatory requirement motivating the WIP (per the discussion of this requirement in the SNPRM). Comments are requested as to whether this proposal is appropriate. Detailed comments are also requested which address the type of contracts that would qualify.

3. Baseline Adjustment for Multiple Modes of Operation

EPA proposed that separate individual baselines be developed for each of the different modes of refinery operation (as discussed in the SNPRM) to minimize anticompetitive effects which could hurt smaller refiners, blenders and importers. However, some refineries may be sufficiently integrated with a blending operation such that the blending operation would not exist without the refinery, or such that negligible blendstocks or gasoline are brought into the blending operation other than those which come from the associated refinery. In such a situation, the concern about anticompetitive effects is greatly reduced. EPA proposes that a refiner which is involved in both of the regulated modes of operation may petition EPA to develop a single baseline for the combined operation, if it can show to the Administrator's satisfaction that a closely integrated relationship exists. EPA does not expect "closely integrated" to apply broadly to refiners who happen to also have blending operations. Comments are requested on this proposal, particularly on the proof required to show "close integration".

4. Ability to Petition for Extraordinary Individual Circumstance

EPA requests comments on the use of an adjusted baseline if, due to the occurrence of extenuating or extraordinary circumstances in 1990, or due to its unique individual situation, a refinery's baseline is unrepresentative of the gasoline it would have produced in 1990. EPA also requests comment on what criteria would have to be met, or proof given, to demonstrate that 1990 refinery operations were indeed different than if the special circumstance had not existed. EPA expects that a refiner would have to petition EPA, and would have to show the baseline values calculated without and without the adjustment.

To limit petitions, EPA proposes that petitions may be granted only if certain proof is presented in the petition, in addition to the baseline parameters calculated with and without the adjustment. Such proof may include a showing that significant financial burden will exist or that the viability of the refinery is at stake. EPA could also require a showing that 1990 operations were significantly different than 1988–89 and 1991–92 operations. Comments are requested as to the degree of financial hardship that might be required to be shown and on additional criteria which might have to be met in order to restrict any such petition to situations falling within the agency's authority under Alabama Power, as discussed in the SNPRM.

Examples of extenuating circumstances could include the following two examples, and EPA requests comments as to whether such circumstances should be deemed extenuating: (1) Downtime which occurs every 4–5 years and which happened to occur in 1990 (nonannual turnaround); and (2) disasters which took out a gasoline blendstock producing unit for 30 days or more (and whether 30 days is appropriate). EPA requests comments as to whether, and what type of, other extenuating circumstances may exist.

EPA also requests comment on whether it should consider allowing a baseline adjustment for the situation where (1) a fuel produced in 1990 under contract to the federal government (e.g., the military) will be phased out of production by 1995 due to changes in fuel requirements by the federal government, and (2) production of that fuel constituted at least 30 percent of a refiner's total production in 1990. For example, JP–4 jet fuel use is being eliminated by the Department of Defense. Because JP–4 is a naphtha/kerosene blend, feedstock previously used to produce it will in the future be used in gasoline. However, that feedstock cannot be used in gasoline without first going through a reformer to increase its octane to suitable gasoline levels. This will naturally increase the average aromatic content of a refiner's gasoline. Refiners for whom JP–4 production constituted a large portion of their total production will have low

baseline aromatics and benzene values relative to the values of the gasoline that will be produced in lieu of JP–4. Under certain individual circumstances, a refinery may have to close if it cannot comply with the anti-dumping provisions because its baseline parameter values were determined while it was under contract to the federal government to produce a non-gasoline fuel. EPA requests comments on this situation, and if adjustments to a baseline determination are granted, how much of a refinery's 1990 production must have constituted the soon-to-be-eliminated fuel for the circumstance to be extenuating.

For all of the above situations, EPA requests comments as to whether such a petitioner should get an individual adjusted baseline, the statutory baseline, or the statutory baseline on an individual parameter basis if only certain parameters were affected by the circumstance, and whether volume adjustments should be allowed.

C. Auditor[25] Requirements and Certification

1. Introduction

In the SNPRM, EPA proposed that an Agency-certified auditor be utilized to verify a refiner's or importer's 1990 individual baseline (i.e., the parameter determination) prior to submission of the baseline to EPA for approval. EPA also proposed that the auditor be independent of the refiner or importer and that EPA would certify the auditor based on criteria developed in consultation with persons knowledgeable in the technical aspects of gasoline refining. EPA recently held a public workshop on this topic and, considering the discussion at that workshop, EPA is proposing additional regulations concerning the certification of auditors and the submission of the individual baseline to EPA.

2. Requirements for Auditors

For the attached regulations, EPA proposes that the term auditor mean an individual or an organization although various persons involved with the auditor may also have to meet certain requirements.

EPA proposes that auditors (and where applicable, the auditor's organization and/or other persons) meet criteria in two areas in order to be certified by EPA to audit refiner and importer baselines. These proposed areas are (1) independence from the refiner or importer, and (2) technical capability to evaluate the process used to develop the baseline parameters. Although these general areas were proposed in the SNPRM, they are being reproposed today in more detail.

Concerning independence, EPA proposes that auditors and any other individuals or organizations, including contracting and subcontracting personnel, who are involved in substantive aspects of baseline verification be independent of the submitter. For example, EPA proposes that all persons involved in the substantive aspects of baseline verification could not have worked in the past five years as an employee of the refiner or importer whose baseline is being verified. EPA expects such criteria to mitigate potential conflict-of-interest concerns that could arise concerning the verification process if the auditor were to have an intimate relationship with the refiner or importer. Additionally, EPA is proposing that the auditor and its contractors and subcontractors be financially independent of the submitter. Specific criteria are listed in the accompanying proposed regulations.

However, EPA is proposing to allow a person to audit the baseline parameters for a particular refiner or importer even if that person also developed the baseline parameters for the same refiner or importer, as long as the person (and his/her contractors, etc.) meet all the requirements for an auditor. While larger refiners are likely to develop their baselines using in-house expertise, this proposal would most likely benefit smaller refiners and importers which are more likely to have their baselines determined for them by an outside company.

EPA requests comments on how to ensure that the independence requirements remain intact throughout the duration of the relationship between the auditor and the refiner, and as to whether the independence requirements should be continued for a time period after the baseline is approved, and what this time period should be.

EPA is also proposing that auditors be technically experienced and knowledgeable in refinery operations. This criterion is important because of the complexity of refinery operations and because refiners may have made substantial changes in feedstocks or refinery operating conditions between 1990 and year(s) when data was collected. Such changes would have to be accounted for in the individual 1990 baseline determinations. Auditing the accounting for such changes and confirming that the necessary adjustments were made is expected to be technically challenging and only those persons with sufficient knowledge and experience would be capable.

EPA is also proposing regulations which describe the technical role EPA expects auditors to fulfill in the verification process. Under these proposed regulations, the auditor would have to perform several tasks to verify certain aspects of the data collection and baseline calculations. Additionally, the auditor would have to describe a minimal amount of its verification process to EPA. As a part of this process, EPA would expect an auditor to know the relevant details and assumptions that went into the baseline determination it verified. Through the fulfillment of these requirements, EPA expects to gain sufficient confidence to approve many of the baseline parameter submissions. For baseline submissions where EPA has some uncertainty, EPA would follow up with the refiner or importer and its auditor to gain this certainty.

EPA requests comment on its proposed criteria requiring that auditors be independent and technically capable of evaluating the baseline parameters. EPA also requests comment on what technical role and reporting role the auditor should play in the verification process, and if EPA should approve persons as auditors who were also involved in developing the baseline parameters for the refiner or importer.

3. Auditor Certification

Because regulations under section 211(k) of the Act are aimed at refiners and importers, EPA believes that the refiner or importer should be responsible for choosing an auditor who meets the proposed requirements. EPA is considering two options for certifying auditors, and requests comments on each of these options.

Under the first option, the refiner or importer would be required to ensure that the auditor meets the criteria, and provide such proof with the baseline submission. The auditor would not be pre-certified by EPA. If an auditor who does not meet the criteria is used by the refiner or importer, the baseline submission would not be approved. This option allows the refiner or importer to begin working with an auditor immediately, if it believes it can prove that the auditor will meet the criteria promulgated in the final rule.

Under the second option, the qualifications of potential auditors would be submitted (by a potential auditor or by a refiner or importer) to

[25] EPA recognizes that the term "auditor" usually refers to a person who evaluates financial data. However, in the context of the baseline development discussed in this proposed rulemaking, "auditor" shall refer to a person who technically evaluates the baseline determination of a refiner or importer for correctness, as defined in this proposal.

EPA after promulgation of the final rule. (EPA is proposing that all qualification submittals indicate for which refiners and importers the auditor, its organization, contractors, and subcontractors do not meet the independence criterion mentioned above.) If no response is received from EPA within 30 days of application, that person would then be deemed an EPA-certified auditor. Refiners and importers would have to use such an EPA-certified auditor in order for their baseline submissions to be accepted. Comments are requested as to whether 30 days from application date is an appropriate response time, or whether a longer or shorter EPA response time should be considered.

Alternatively, while EPA cannot certify auditors prior to the promulgation of the final rule, it may be appropriate to invite submission of applications by persons desiring to be auditors prior to the final rulemaking. EPA could begin processing auditor certification submissions prior to promulgation of the final rule, and could certify auditors soon after the promulgation date.

Comments are requested on both of these options. EPA will consider other proposals certifying auditors.

D. Baseline Submission and Approval

In giving its approval of a baseline submission, EPA plans to rely heavily on the auditor's verification. That explains, in part, EPA's concern about auditor independence and technical abilities. Based on this reliance, if EPA discovers that an auditor has displayed gross incompetency or intentionally committed a significant error in the verification process, EPA may pursue debarment of the auditor under 18 USC 1001.

EPA had proposed in the SNPRM that auditors submit a plan to EPA prior to beginning their verification process. After considering this proposed requirement further and discussing it at the public workshop, EPA is considering not adopting this requirement. Instead, EPA may require the auditor to meet certain reporting requirements in their report to EPA concerning the baseline verification process. EPA believes this change will help expedite the verification process.

EPA is also proposing that each refiner or importer inform the Administrator of the name, associated organization, mailing address and telephone number of each auditor hired to verify the gasoline baseline parameter values. For example, if a refiner initially hired an auditor but then decided to use a different auditor for verifying its baseline parameters, then the refiner or importer would have informed EPA of both auditors as each was hired. EPA expects to gain insights into the quality and integrity of the baseline verification process. EPA requests comment on the proposed requirement that refiners and importers inform the Administrator of the auditor selected to verify the baseline parameter values.

EPA proposes that baseline submissions be submitted by the refiner or importer to EPA within 6 months of the date of the final rulemaking. This timeframe is reasonable if most baseline auditors will be able to be certified by EPA, as discussed above, soon after promulgation of the final rule, or if the refiner or importer assumes responsibility for choosing an auditor which meets the requirements of the final rule, without pre-certification of the auditor by EPA. In the latter case, a refiner or importer could begin working with an auditor immediately. Comments are requested on the appropriateness of requiring submissions within 6 months of promulgation of the final rule.

EPA proposes to accept only complete baseline submissions. As previously discussed, if data to be used in baseline development (per Method 3) is collected after promulgation of the final rule (because the minimum data requirements specified for using Method 1, 2 or 3 for determining a fuel component baseline value per the proposed regulations have not been met), EPA proposes that data may be collected through the end of the third month of the first three full months during which summer gasoline is produced by the refiner following promulgation of the final rule. Individual baselines which were determined using data collected after promulgation of the final rule shall be submitted to EPA by September 1, 1994. EPA requests comments on the above proposal.

X. Environmental and Economic Impacts

The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the rulemaking for reformulated and conventional gasoline, which is available in Public Docket No. A–91–02, located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

XI. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should also be submitted, to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket No. A–92–12 (See **ADDRESSES**). The close of the comment period will be announced in connection with a later **Federal Register** notice announcing the public hearing (See **DATES**).

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittals and clearly labelled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

XII. Compliance With the Regulatory Flexibility Act

A. Introduction

Per section 605 of the Regulatory Flexibility Act (RFA), EPA needs to determine the extent to which significant adverse economic impacts on a substantial number of small business entities are likely due to the regulations being proposed today. The potential impacts due to the regulations for the complex model, Phase II reformulated gasoline standards, and renewable oxygenate incentive program are discussed briefly below. The full RFA is presented in the DRIA. Comments on the RFA are requested.

Certain sectors of the gasoline industry are not likely to be more adversely affected by the complex model, the Phase II reformulated gasoline standards or the President's ethanol initiative than by previous proposals, such as the simple model. Comments are requested as to the validity of the conclusion that terminal operators, bulk plants and retail gasoline sellers will be relatively unaffected by these provisions.

B. Complex Model Impacts on Small Entities

The proposed complex model provides refiners (large or small) with the flexibility to choose the least cost method of fuel control in order to

produce reformulated gasoline. It is expected that this flexibility will reduce the cost of producing reformulated gasoline for most refiners. Thus, it is not likely that small refiners will be adversely impacted by this proposal.

The proposed complex model shows that oxygenate use affects other component values such that no net increase in NO_X emissions occurs. Additionally, oxygen is a required component of reformulated gasoline. Thus demand for oxygenate is not expected to decrease due to the complex model, and oxygenate producers should not be adversely affected.

EPA requests comments relative to its finding that small refiners and oxygenate producers are not likely to be adversely affected by use of the complex model.

C. Phase II Standards

Small refineries which choose to produce reformulated gasoline are likely to experience higher costs (per gallon) than large refineries in meeting the proposed Phase II standards. The Phase II standards are more severe than the Phase I standards, and thus more severe processing and/or capital equipment purchase may be necessary. Small refineries, which do not have the advantage of economies of scale, may have higher expenses and may have a more difficult time raising the necessary capital. However, a Sobotka analysis [20] of this situation concluded that small refineries are not disadvantaged by the federal reformulated gasoline requirements (at current opt-in levels) because they either do not produce gasoline, do not ship a significant portion of their gasoline to the affected markets, or could readily serve conventional gasoline markets.

Oxygenate producers should also not be adversely affected by the Phase II requirements, since increasing the oxygen content of reformulated gasoline over the minimum 2.0 weight percent may be a cost-effective method for meeting the proposed standards. Thus oxygenate producers should not be adversely affected by the Phase II requirements. It is possible that nonethanol oxygenates could be slightly negatively impacted relative to ethanol because the proposed Phase II standards are based on MOBILE5.0. MOBILE5.0 reduces the impact of evaporative emissions relative to exhaust emissions. If the contribution of ethanol's high blending RVP is thus reduced, ethanol use could become more attractive, to the benefit of ethanol producers. However, any potential "decrease" in the market share for nonethanol oxygenates would not represent a level lower than at present, but merely a level less than had previously been forecasted. EPA requests comments on the impact of the Phase II standards on oxygenate producers.

D. President's Ethanol Initiative

As background, it is worth pointing out that some refiners may be adversely affected and some actually benefitted by the ethanol initiative, depending on their pre-ethanol initiative plans for producing reformulated gasoline. If they were planning on using ethanol, they were intending having to make a nonoxygenated reformulated gasoline blendstock (RBOB) at 7.1 psi. Now, they can make that at 7.8 psi. However, if the refiner was not planning on using ethanol, it was planning to have its reformulated gasoline blendstocks meet the 8.1 psi requirement, and now must produce such blendstocks at 7.8 psi. Comments on the impact of the ethanol initiative on small refiners.

It is also possible that the incentive to use renewable oxygenates could reduce the use of nonrenewable oxygenates such as MTBE in reformulated gasoline and, thus, affect the future increase in production that producers of these oxygenates would otherwise have obtained by the reformulated gasoline program. However, this would represent gains in production foregone as a result of today's proposal, and not reductions in production. Because of their higher costs, noncaptive (i.e., stand alone) MTBE producers would be more negatively affected than captive (on-site, refinery plants) MTBE plants. Adverse effects on any ether producer could be reduced if they have the ability to produce ethanol-based ethers. If MTBE producers are negatively impacted, methanol producers who supply the methanol feedstock to the MTBE process could also be negatively affected. Ethanol producers, on the other hand, will of course benefit from the initiative. EPA requests comments on the impact of the renewable oxygenate initiative on oxygenate producers.

XIII. Statutory Authority

The statutory authority for the standards proposed today is granted to EPA by sections 114, 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545(c) and (k), and 7601.

XIV. Administrative Designation and Regulatory Analysis

Pursuant to Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The Administrator has determined that Phase II reformulated gasoline will cost well in excess of $100 million per year and therefore should be classified as a major rule.

A Draft Regulatory Impact Analysis (RIA) for the reformulated gasoline program has been prepared and placed in the docket for that rulemaking (A–92–12). The final RIA will be completed contemporaneously with the final reformulated gasoline rule. The Draft Regulatory Impact Analysis was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Written comments from OMB and EPA response to those comments have also been placed in the public docket for this rulemaking.

XV. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. These information collection requirements have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. [1591]) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., S.W. (PM–223Y); Washington, DC 20460 or by calling (202) 382–2740.)

Send comments regarding the collection of information, including suggestions for reducing the burden of this collection to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20503; and to the Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

[20] "Evaluation of the Use of Ethanol and MTBE in Reformulated Gasoline," Prepared by Sobotka & Co., Inc. for U.S. EPA under Contract No. 68–W9–007, September 30, 1992.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93–4015 Filed 2–25–93; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
Februarv 26, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Approval for Reassumption of Jurisdiction by the Metlakatla Indian Community Over Indian Child Custody Proceedings; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approval of Petition for Reassumption of Jurisdiction by the Metlakatla Indian Community Over Indian Child Custody Proceedings Involving Indian Children Who Are Enrolled or Eligible for Enrollment With the Metlakatla Indian Community or Who Reside or Are Domiciled on the Annette Islands Reserve in Alaska

February 18, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Metlakatla Indian Community of Alaska has filed a petition with the Department of the Interior to reassume exclusive jurisdiction over child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Metlakatla Indian Community or who reside or are domiciled on the Annette Islands Reserve in Alaska. The Assistant Secretary–Indian Affairs has reviewed the petition and determined that tribal exercise of jurisdiction is feasible and that the tribe has a suitable plan for exercising such jurisdiction. This notice constitutes the official approval of the Metlakatla Indian Community's petition by the Department of the Interior.

EFFECTIVE DATE: The Metlakatla Indian Community reassumes concurrent jurisdiction sixty (60) days after the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs, Division of Social Services, 1849 C Street NW., Mail Stop 310–SIB, Washington, DC 20240, (202) 208–2721.

The principal author of this document is Betty B. Tippeconnic, Bureau of Indian Affairs, Division of Social Services, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The authority for the Assistant Secretary–Indian Affairs to publish this notice is contained in 25 U.S.C. 13.14 and 209 DM 8. Section 108 of the Indian Child Welfare Act of 1978, Public Law 95–608, 92 Stat. 3074, 25 U.S.C. 1918, authorizes Indian tribes that occupy a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts jurisdiction over Indian child custody proceedings, pursuant to Federal statute, to reassume jurisdiction over such proceedings. To reassume such jurisdiction, a tribe must first file a petition in the manner prescribed in 25 CFR part 13. Notice of receipt of this petition was published in the **Federal Register**, Vol. 56, No. 31, page 6260, on February 14, 1991. The petition is then reviewed by the Department of the Interior using criteria set out in 25 CFR 13.12. If the Department finds that the tribe has submitted a suitable plan and that tribal exercise of jurisdiction is feasible, the petition is approved by publication in the **Federal Register**.

The geographic area subject to the reassumption of jurisdiction is the Annette Islands Reserve, Alaska.

Eddie F. Brown,

Assistant Secretary–Indian Affairs.

[FR Doc. 93–4466 Filed 2–25–93; 8:45 am]

BILLING CODE 4310-02-M

federal register

Friday
February 26, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

Draft Form for Reporting Suspect Adverse Events and Problems With Medications and Devices; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0072]

Draft Form for Reporting Suspect Adverse Events and Product Problems With Medications and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a draft form for reporting adverse events and product problems with medications, devices, and any other products (such as dietary supplements) that are regulated by the agency. The draft form, entitled "Medication and Device Problem Report," is intended to replace the following current and proposed forms used by the agency.

FDA Form 3318: Drug Quality Reporting System;

FDA Form 2519f: Medical Device and Laboratory Product Problem Reporting Program;

FDA test Form 3375: Medical Device Reporting Part I;

FDA test Form 3322: Medical Device Reporting;

FDA Form 1639 (all versions): Adverse Drug and Biologic Experience Reporting.

FDA will phase out the above forms within 180 days of the issuance of a final form based on this draft.

DATES: Written comments by April 12, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon Natamblut or Dianne Kennedy, Office of the Commissioner (HF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5691.

SUPPLEMENTARY INFORMATION:

Monitoring the safety of marketed medications and medical devices is an important public health protection activity. A primary component of FDA's postmarketing surveillance is its system for the reporting of adverse experiences and product problems with medications and medical devices. As used in this notice and on the draft form, "medications" includes prescription and nonprescription (over-the-counter or OTC) drugs and biologics.

FDA is announcing the availability of a single "user-friendly" form for reporting drug-, biologic-, and medical device-related adverse events and product problems. Adverse events and product problems with other products regulated by FDA, such as dietary supplements, can also be reported on this form. FDA is not at this time planning to use the form for reporting adverse events for animal drugs.

The agency hopes that a simplified and consolidated reporting form will improve reporting of suspected serious adverse events and product problems, and thereby enhance the detection and reduction of drug-, biologic-, and device-induced disease and injuries. FDA believes that a single form will also enhance agency-wide consistency in the collection of postmarketing data. The agency has designed this form to require no greater time for reporters to complete than the forms that it will replace.

FDA has prepared two versions of the one-page draft form. One version is for voluntary reports by health professionals (FDA draft Form XXXX), and the second version is for mandatory reports from manufacturers, user facilities, and distributors (FDA draft Form XXXXA). The front sides of both versions are virtually identical. The back side of the health professional version contains advice for reporting, public reporting burden information, and a self-mailer so that the form can be mailed to FDA at no expense to the reporter.

The back side of the manufacturer/user facility/distributor version contains additional required data elements and public reporting burden information. If a medication manufacturer is reporting an adverse event in which no suspect medical device is involved, the manufacturer section (section C) on the back side of the form can be completed and reproduced in place of the suspect medical device section (section D) on the front of the form. This makes it possible for medication manufacturers to submit all necessary information on one side of the form. Specific user facility, distributor, and manufacturer reporting guidelines will be developed to provide guidance in the use of the new form.

Once the new form is issued in final form, FDA will disseminate the form widely, and health professionals submitting voluntary reports will be able to submit this form by mail or by toll-free fax to a central receipt point at FDA. The agency is also examining ways to permit electronic submission of reports by manufacturers. FDA specifically encourages suggestions for facilitating electronic submission. Manufacturers, user facilities, and distributors will send their reports to the addresses specified in the appropriate regulations.

The data elements contained in the proposed form are largely the same as those required in the current forms. FDA has attempted to clarify and simplify the consolidated form by deleting some data elements that are not essential and others that may have caused confusion in the past.

Health professionals reporting directly to the agency will be asked to indicate on the form if they do not want their identity disclosed to the manufacturer. By allowing the agency to share the reporter's identity with the manufacturer, health professionals will facilitate efforts by FDA and the manufacturer to conduct necessary and rapid followup in selected cases. The agency will not release the reporter's identity to the general public, in response to a request from the public. Nor will the agency release the reporter's identity to the manufacturer if the reporter requests that this information not be provided.

FDA will hold all information identifying patients in the strictest confidence; that is, the identities of patients will not be disclosed to manufacturers or to the public.

FDA is committed to working in partnership with health professionals and industry to identify adverse events and product problems as rapidly as possible. In addition to proposing this consolidated reporting form, the agency is working in a number of ways to achieve this goal. In conjunction with professional organizations, FDA will develop an education program, targeted to health professionals of all types, to increase awareness of both the importance of reporting and the mechanics of reporting. For adverse event reporting, health professionals will be informed that they can report either directly to FDA or to the manufacturer, who in turn, is required by regulation to submit adverse event reports to FDA. FDA is considering other educational efforts to raise awareness of medication- and device-induced disease and injury, such as designing professional school curricula, participating in national and regional conferences, and publishing articles and columns in professional journals.

The date that the final form will be available has not yet been set. However, FDA plans to coordinate the issuance of the final form with publication of: (1) A final rule for Adverse Experience Reporting for Licensed Biological Products (proposed on March 29, 1990, 55 FR 11611), and (2) various final rules on Medical Device, User Facility, Distributor, and Manufacturer

Reporting, Certification, and Registration (21 CFR parts 803 and 807) (proposed on November 26, 1991, 56 FR 60024).

Interested persons may, on or before April 12, 1993, submit to the Dockets Management Branch (address above) written comments regarding this draft form. FDA will consider these comments in determining whether modifications to the draft form are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 22, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

BILLING CODE 4160-01-M

DRAFT

To submit report directly to FDA, mail to:
Food & Drug Administration (HXX-XXX)
Rockville, MD 20857
or
FAX to: 1-800-FDA-

Page of

Medication and Device Problem Report

(for health professionals)

1 Just fill in sections that apply
2 Attach additional pages if needed
3 Use a separate form for each patient

Form Approved OMB No XXXXXXXXXX See OMB statement on reverse

Mfr report/control #

UF/Dist report #

FDA Use Only

A Patient information

1 **Patient initials** In confidence

2 **Age at time of event** In months if less than 3 years old In days if less than month old — Years Months Days

3 **Sex** ☐ female ☐ male

4 **Weight** ____ lb or ____ kg

B Adverse event or product problem

1 ☐ **Adverse event** and/or ☐ **Product problem** (defect or malfunction)

2 **Reasons for reporting adverse event** (check all that apply)
☐ death mo day yr
☐ life-threatening
☐ hospitalization – initial or prolonged due to event
☐ disability
☐ congenital anomaly
☐ required intervention to prevent permanent damage
☐ other

3 **Date of event** mo day yr

4 **Date of this report** mo day yr

5 **Describe event or problem**, attach hospital discharge summary if available

6 **Relevant tests/laboratory data**–attach autopsy pathology & lab reports if available

7 **List preexisting medical conditions and other relevant history**

C. Suspect medication(s)

1 **Name & strength** (give mfr/labeler if known)
a
b

2 **Dose, frequency & route**
a
b

3 **Therapy dates** (or give duration) from to
a
b

4 **Diagnosis for use** (indication)
a
b

5 **Event abated after use stopped or dose reduced** a ☐ yes ☐ no b ☐ yes ☐ no

6 **Lot #** (if known)
a
b

7 **Exp. date** (if known)
a
b

8 **Event reappeared after reintroduction** a ☐ yes ☐ no b ☐ yes ☐ no

9 **NDC #** (if known)
a
b

10 **Other medications/devices** used prior to event – give therapy dates
a
b
c

D. Suspect medical device

1 **Product name**

2 **Type of device**

3 **Manufacturer name & address**

4 **Operator of device**
☐ health professional
☐ lay user/patient
☐ assistive personnel

5 **Exp. date** (if known) mo day yr

6
model #
catalog #
serial #
lot #
other #

7 **If implanted, give date** mo day yr

8 **If removed, give date** mo day yr

9 **Device available for evaluation?**
☐ yes ☐ no ☐ returned to mfr mo day yr

10 **Other medications/devices** used prior to event – give therapy dates
a
b

E. Reporter (see confidentiality section on back)

1 **Name, address & phone #**

2 **Health professional?** ☐ yes ☐ no

3 **Occupation**

4 **Also reported to**
☐ manufacturer
☐ user facility
☐ distributor

5 **If you do NOT want your identity disclosed to the manufacturer, place an " X " in this box.** ☐

FDA Form XXXX

Submission of a report does not constitute an admission that medical personnel or the product caused the event.

DRAFT

ADVICE ABOUT REPORTING

Report a SERIOUS adverse event when the outcome is :

- death
- life-threatening
- disability
- hospitalization – initial or prolonged
- congenital anomaly
- intervention to prevent permanent damage

Be particularly alert during the first 3 years after a product is first marketed. Historically, that's when most new problems are discovered.

Report even if...

... you're not certain the product caused the event.
... some details are unknown.

Report product problems when you have a concern regarding the quality, performance or safety of any medication or device. Problems may range from suspected contamination or defective components to poor packaging and labeling.

Confidentiality: The identity of the patient is held in strictest confidence by the FDA. The identity of the reporter will be shared with the manufacturer unless you request otherwise. However, the FDA will not disclose the reporter's identity in response to a request from the public.

How to report: You may report either to FDA or the manufacturer. To report directly to FDA, mail to the address below or fax toll-free to 1-800-FDA-

If your report involves a device, and the event occurred outside a doctor's office, you should notify the person in your facility who is responsible for complying with medical device reporting requirements. This person must report deaths to FDA and the manufacturer; serious injuries to the manufacturer or FDA if the manufacturer is unknown; and malfunctions to the manufacturer.

If your report involves a vaccine, call VAERS at 1-800-822-7967 for a reporting form.

(This form may be used to report any medication, medical device or other product regulated by the FDA.)

Your report is invaluable in identifying serious problems that affect not only your patient but potentially other patients worldwide.

The public reporting burden for this collection of information has been estimated to average 15 - 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send your comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Reports Clearance Officer, PHS
Hubert H. Humphrey Building,
Room 721-B
200 Independence Avenue, S.W.
Washington, DC 20201
ATTN: PRA

and to:
Office of Management and Budget
Paperwork Reduction Project
(0910-0230)
Washington, DC 20503

Please do NOT return this form to either of these addresses.

FDA Form XXXX

Please Use Address Provided Below – Just Fold In Thirds, Tape and Mail

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES OR APO/FPO

BUSINESS REPLY MAIL
FIRST CLASS MAIL PERMIT NO. ROCKVILLE, MD

POSTAGE WILL BE PAID BY ADDRESSEE

Department of Health & Human Services
Public Health Service
Food & Drug Administration - (HXX–XXX)
Rockville, MD 20857

DRAFT

Medication and Device Problem Report

Form Approved: OMB No. XXXXXXXXX See OMB statement on reverse

mfr report/control #

UF/Dist report #

FDA Use Only

1. Just fill in sections that apply
2. Attach additional pages if needed
3. Use a separate form for each patient

Page ___ of ___

A. Patient Information

1. Patient initials — In confidence
2. Age at time of event — In months if less than 3 years old; In days if less than 1 month old — Years / Months / Days
3. Sex — ☐ female ☐ male
4. Weight — ____ lb or ____ kg

B. Adverse event or product problem

1. ☐ Adverse event and/or ☐ Product problem (defect or malfunction)
2. Reasons for reporting adverse event (check all that apply)
   - ☐ death ___/___/___ (mo/day/yr)
   - ☐ life-threatening
   - ☐ hospitalization – initial or prolonged due to event
   - ☐ disability
   - ☐ congenital anomaly
   - ☐ required intervention to prevent permanent damage
   - ☐ other: _____
3. Date of event ___/___/___ (mo/day/yr)
4. Date of this report ___/___/___ (mo/day/yr)
5. Describe event or problem, attach hospital discharge summary, if available
6. Relevant tests/laboratory data–attach autopsy, pathology & lab reports, if available
7. List preexisting medical conditions and other relevant history

C. Suspect medication(s)

1. Name & strength (give mfr/labeler, if known)
   a.
   b.
2. Dose, frequency & route
   a.
   b.
3. Therapy dates (or give duration) from/to
   a.
   b
4. Diagnosis for use (indication)
   a.
   b.
5. Event abated after use stopped or dose reduced — a. ☐ yes ☐ no; b. ☐ yes ☐ no
6. Lot # if known
   a.
   b
7. Exp. date (if known)
   a
   b.
8. Event reappeared after reintroduction — a. ☐ yes ☐ no; b. ☐ yes ☐ no
9. NDC # (if known)
   a. – –
   b. – –
10. Other medications/devices used prior to event – give therapy dates
    a
    b.
    c.

D. Suspect medical device

1. Product name
2. Type of device
3. Manufacturer name & address
4. Operator of device
   - ☐ health professional
   - ☐ lay user/patient
   - ☐ assistive personnel
5. Exp. date (if known) ___/___/___ (mo/day/yr)
6. model #
   catalog #
   serial #
   lot #
   other #
7. If implanted, give date ___/___/___ (mo/day/yr)
8. If removed, give date ___/___/___ (mo/day/yr)
9. Device available for evaluation?
   ☐ yes ☐ no ☐ returned to mfr ___/___/___ (mo/day/yr)
10. Other medications/devices used prior to event – give therapy dates
    a.
    b.

E. Reporter

1. Name, address & phone #
2. Health professional? ☐ yes ☐ no
3. Occupation
4. Also reported to
   - ☐ manufacturer
   - ☐ user facility
   - ☐ distributor

FDA Form XXXXA

Submission of a report does not constitute an admission that medical personnel or the product caused the event.

DRAFT

Medication and Device Problem Report
(continued)

Refer to guidelines for specific instructions

Submission of a report does not constitute an admission that the user facility, distributor, manufacturer or product caused the event

Page ___ of ___

FDA Use Only

F. For use by user facility/distributor–devices only

1. Check one: ☐ user facility ☐ distributor
2. Report number
3. User facility or distributor name/address
4. Contact person
5. Phone Number
6. Date reported to user facility or distributor ___/___/___ (mo/day/yr)
7. Type of report: ☐ initial ☐ follow-up # _____
8. Date of this report ___/___/___ (mo/day/yr)
9. Device purchase date ___/___/___ (mo/day/yr)
10. Event problem codes (refer to coding manual): patient code _____ device code _____
11. Report sent to FDA? ☐ yes ___/___/___ (mo/day/yr) ☐ no
12. Location: ☐ hospital ☐ home ☐ nursing home ☐ outpatient treatment facility ☐ other _____ ☐ outpatient diagnostic facility ☐ ambulatory/surgical facility
13. Report sent to manufacturer? ☐ yes ___/___/___ (mo/day/yr) ☐ no
14. Manufacturer name/address

G. All manufacturers

1. Manufacturer name/address & phone # (site of mfr for device)
2. Report source (check all that apply): ☐ foreign ☐ study ☐ literature ☐ consumer ☐ health professional ☐ user facility ☐ company representative ☐ distributor ☐ other _____
3. Date received by manufacturer ___/___/___ (mo/day/yr)
4. NDA # _____ IND # _____ PLA # _____ pre-1938 ☐ yes
5. If IND, protocol #
6. Type of report (check all that apply): ☐ 5-day ☐ 15-day ☐ 10-day ☐ periodic ☐ initial ☐ follow-up # ___
7. Adverse event term(s) (Biologics)
8. Report/control #

H. Device manufacturers only

1. Contact office – include address & phone # if different from G_1.
2. Device manufacture date ___/___/___ (mo/day/yr)
3. Product code
4. Labeled for single use? ☐ yes ☐ no
5. Type of report: ☐ death ☐ serious injury ☐ malfunction that might cause death or serious injury if it were to recur ☐ other _____
6. Usage of device: ☐ initial use of device ☐ reuse ☐ unknown
7. Device evaluated by mfr? ☐ yes ☐ failure analysis [redacted] ☐ no (if no, attach page to explain why not) or provide code: _____
8. If follow-up, what type? ☐ correction ☐ additional information ☐ response to FDA request ☐ device evaluation
9. Evaluation codes (refer to coding manual): method _____ results _____ conclusions _____
10. If remedial action initiated, check type: ☐ recall ☐ notification ☐ repair ☐ inspection ☐ replace ☐ patient monitoring ☐ relabeling ☐ modifications, adj ☐ other _____
11. If action reported to FDA under 21 CFR XXX.XXXX, list correction/removal reporting number:
12. ☐ Manufacturer narrative or 13. ☐ Corrected data

The public reporting burden for this collection of information has been estimated to average five hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send your comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Reports Clearance Officer, PHS
Hubert H. Humphrey Building, Room 721-B
200 Independence Avenue, S.W.
Washington, DC 20201
ATTN: PRA

and to:
Office of Management and Budget
Paperwork Reduction Project (0910-0230)
Washington, DC 20503

Please do NOT return this form to either of these addresses.

FDA Form XXXXA - back

[FR Doc. 93–4476 Filed 2–25–93; 8:45 am]

BILLING CODE 4160–01–C

federal register

Friday
February 26, 1993

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 300

Invitation to Comment on the Regulatory Definition of "Serious Emotional Disturbance"; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 300

Invitation To Comment on the Regulatory Definition of "Serious Emotional Disturbance" and the Use of This Term in the Individuals With Disabilities Education Act

AGENCY: Department of Education.

ACTION: Correction to the notice of inquiry.

SUMMARY: On February 10, 1993, a notice of inquiry was published in the **Federal Register** at 58 FR 7938. This document is being published to correct paragraphs (c) and (c)(1) in the **SUPPLEMENTARY INFORMATION** for the purpose of editorial clarification. Paragraphs (c) and (c)(1), of the **SUPPLEMENTARY INFORMATION** is correctly printed as follows:

(c) Should the Secretary propose to replace the definition of the term "children with serious emotional disturbance" in the regulations implementing part B with the following definition:

(1) As used in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)):

(A) The term "serious emotional disturbance" means a disability that is—

(i) characterized by behavioral or emotional response in school programs so different from appropriate age, cultural, or ethnic norms that the responses adversely affect educational performance, including academic, social, vocational or personal skills;

(ii) more than a temporary, expected response to stressful events in the environment;

(iii) consistently exhibited in two different settings, at least one of which is school-related; and

(iv) unresponsive to direct intervention applied in general education, or the condition of a child is such that general education interventions would be insufficient.

(B) The term includes such a disability that co-exists with other disabilities.

(C) The term includes a schizophrenic disorder, affective disorder, anxiety disorder, or other sustained disorder of conduct or adjustment, affecting a child, if the disorder affects educational performance as described in paragraph (1).

FOR FURTHER INFORMATION CONTACT: Rhonda Weiss, Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3626, Washington, DC 20202–2720. Telephone: (202) 205–9021. Deaf and hearing impaired individuals may call (202) 205–9090 for TDD services.

Dated: February 19, 1993.

Andrew Pepin,

Acting Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 93–4323 Filed 2–25–93; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 26, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Use of Nitrogen or Other Inert Gas for Tire Inflation in Lieu of Air; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26147, Amendment No. 25–78]

RIN 2120–AD37

Use of Nitrogen or Other Inert Gas for Tire Inflation in Lieu of Air

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Federal Aviation Regulations (FAR) requires that an inert gas, such as nitrogen, be used in lieu of air, for inflation of tires on certain transport category airplanes. This action is prompted by at least three cases in which the oxygen in air-filled tires combined with volatile gases given off by a severely overheated tire and exploded upon reaching autoignition temperature. The use of an inert gas for tire inflation will eliminate the possibility of a tire explosion.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Robert C. McCracken, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue Southwest, Renton, Washington 98055–4056; telephone (206) 227–2118.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 90–7, which was published in the **Federal Register** on March 5, 1990 (55 FR 7876), and a correction notice published March 21, 1990 (55 FR 10467). Notice 90–7 proposed to require that an inert gas, such as nitrogen, be used in lieu of air, for inflation of tires on certain transport category airplanes.

The airworthiness standards for airplane tires are contained in § 25.733 of the FAR. This section describes the loads and speed ratings required of each tire, and requires that the tires be shown to be suitable for their intended use. In addition, each tire may be manufactured under technical standard order (TSO), which means that the tire has passed a series of rigorous dynamometer tests and is produced in accordance with an approved manufacturing process and quality control system. Airplane tires are designed for strength and durability and, since the advent of turbojet transport airplanes, they have had a satisfactory service history. Despite this emphasis on strength and durability for airplane tires, there have been instances of tire failures in the wheel well during flight on transport category airplanes. The great majority of these have been classified as tire bursts, with only a few having been identified as tire explosions. This is an important distinction, which is relevant to this rulemaking action.

A tire burst, as referred to in § 25.729(f), is a sudden, sometimes violent, venting of the pressure from within a tire, usually associated with a flaw in the tire, foreign object damage, or tire overheat/overload. The FAA assumes that tire bursts will occasionally occur, given the severe operating environment of airplane tires, and the fact that certain tire damage may go undetected until tire failure. With this in mind, equipment installed in wheel wells is evaluated at the time of certification to determine its ability to withstand the effects of a bursting tire. Analyses and laboratory tests are performed to identify critical areas, and design changes are often made to ensure that a single tire burst will not cause loss of critical functions.

A tire explosion is a completely different phenomenon. It results from the autoignition and explosion of a mixture of explosive vapors released from the innerliner of a severely overheated or abused tire, and any oxygen that may be present inside the tire. A tire explosion in the wheel well is an unlikely event, since it is the result of a combination of several related events: A brake must be severely overheated due to some brake system failure; the wheel thermal fuse plugs, because of their orientation when the landing gear are retracted, must fail to respond quickly enough to the overheated condition; the overheated and possibly damaged tire must hold together long enough to allow the gas mixture in the tire to reach autoignition temperature; and there must be sufficient oxygen inside the tire to support an explosion

It is impossible to design a thermal fuse plug that would be effective in a tire explosion. Most thermal fuse plugs in use today are hollow bolts installed in the wheel rim. The cavity in the bolt is filled with a material that melts at a precisely defined temperature and is ejected from the hollow bolt by tire pressure, allowing the tire to deflate. Because the pressure and temperature rise inside the tire would be nearly instantaneous following ignition, the melting of the fuse plug, which is basically a mechanical process, would not have time to take place. Also, the cross sectional area of a series of fuse plugs sufficient to safely vent the energy of an explosion would be so large that it could seriously compromise the structural integrity of the wheel. It is more logical to prevent a tire explosion than to attempt to deal with it after it happens. A tire explosion can be prevented by the use of an inert gas such as nitrogen for tire inflation.

Laboratory tests conducted in 1973 show a definite relationship between the quantity of oxygen in a tire and the gas mixture's autoignition temperature. Test data indicate that at nitrogen concentrations between 80 percent and 90 percent (the atmosphere contains approximately 80 percent nitrogen and 20 percent oxygen), ignition of inner tire liner samples occurred in a test chamber with temperatures varying from 478 °F to 518 °F. Nitrogen concentrations between 90 percent and 95 percent raised the autoignition temperatures to a range of 520 °F to 531 °F. At nitrogen concentrations greater than 95 percent, there was no pressure increase in the test chamber, even at chamber temperatures of 670 °F, indicating that there was no ignition. Based on these tests, it was concluded that any concentration of oxygen in a tire in excess of 5 percent of the total gas will support a reaction. At a concentration above 10 percent, this reaction is an abrupt autoignition. At concentrations from 5 percent to 10 percent, this reaction is assumed to be a low level autoignition, based on measurement of test chamber pressure and temperature.

If a tire contains at least 95 percent nitrogen or other gases shown to be inert, and is involved in a severe overheat situation as described above, the atmosphere inside the tire would prevent autoignition, or at least delay it long enough either for the fuse plugs to react and release tire pressure, or for the tire itself to fail from overheat, resulting in the less severe tire burst.

Since the hazard associated with a tire explosion in the wheel well during flight exists on large transport airplanes using tires inflated with air, § 25.733 is amended to require that tires mounted on braked wheels be inflated with dry nitrogen, or other gases shown to be inert, such that the gas mixture does not contain oxygen in excess of 5 percent by volume. As other means may be available to prevent tire explosions, this amendment requires the use of an inert gas for tire inflation unless the tire liner material will not produce volatile gases when heated or means are provided to prevent tire temperatures from reaching unsafe levels.

The Federal Aviation Administration (FAA) recognizes that nitrogen may not always be available at some airports, and that the prohibition against the use

of air to refill a low tire may cause some inconvenience. As indicated by the testing described above, nitrogen in the tire may be diluted with oxygen to a 95 percent concentration without compromising safety. Any maintenance procedure developed by an operator that would assure that any tire refill using air would not allow the nitrogen concentration to drop below 95 percent would be an acceptable method of compliance with the rule. For example, a manufacturer has published in the maintenance manuals of its models, a chart which explains a repetitive air refill procedure for a residual tire nitrogen content of 90 percent. While this chart would not be usable for concentration of 95 percent, it shows that similar procedures for a minimum nitrogen concentration of 95 percent for a range of tire sizes and pressures could be easily developed.

This new rule applies to large transport category airplanes with a maximum certificated takeoff weight greater than 75,000 pounds. A review of service difficulty reports has revealed that tire explosions, as opposed to tire bursts, tend to occur on the larger, heavier airplanes. While the mechanism of a tire explosion is not fully understood, it is clear that sufficient energy to raise the air in a tire to autoignition temperature must be provided by an overheated brake. Larger airplanes generally have higher takeoff and landing speeds and, at the higher gross weights, this provides for more kinetic energy to be absorbed by the brakes as heat. In addition, the volume of gas present in the larger tires installed on larger, heavier airplanes contain more combustible gas than would be found on the smaller airplanes, which would result in a more damaging explosion. Finally, the FAA has no records of adverse service history on smaller transport category airplanes that would suggest that the use of air for tire inflation constitutes a hazard on these airplanes.

In addition, this amendment adds the requirement to use an inert gas for tire inflation for braked wheels only, since there is no source of excessive heat present on unbraked wheels.

In response to the unsafe condition associated with tire explosions, the FAA issued an airworthiness directive (AD) in April 1987 which requires the servicing of tires on certain large transport category airplanes with nitrogen in lieu of air. The AD requires the installation of a placard, either in the wheel well or on or near each landing gear strut incorporating braked wheels, and in a location so as to be easily seen and readable by a person performing routine tire servicing. The placard is to read "INFLATE TIRES WITH NITROGEN ONLY." Alternatively, the operator is to incorporate into the FAA-approved maintenance program procedures to ensure that the gas mixture will not exceed 5% oxygen by volume. The FAA believes that an appropriate placard installed on the airplane and the addition of a suitable limitation on the type certificate data sheet would be an acceptable means of compliance with this new rule. It would also be appropriate to include information regarding servicing tires with an inert gas in the manufacturer's maintenance manuals under Instructions for Continued Airworthiness.

Discussion of Comments

Comments were received from two foreign government agencies, four trade organizations, and one company manufacturing landing gear components. While all of the commenters support the proposal, two parties offer comments suggesting changes of a clarifying nature.

One commenter suggests that control of the inflation media should apply to any aircraft with a maximum certificated takeoff weight (MCTW) of more than 5,700 kilograms (12,560 pounds) that has retractable undercarriage containing braked wheels, and not be limited to aircraft of more than 75,000 pounds MCTW. No information was presented by the commenter to support this suggestion, and the FAA has no information to support the suggestion. As noted in the preamble of Notice 90–7, the FAA has no records showing adverse service history on smaller transport category airplanes that would suggest that the use of the air for tire inflation constitutes a hazard. This is due to the higher energy that must be absorbed by the brakes, wheels, and tires with the higher weights and landing speeds associated with larger airplanes. Limiting the applicability to airplanes with "retractable undercarriages" is not considered appropriate. There will, in all likelihood, be no transport category airplanes with takeoff weights above 75,000 pounds certificated with fixed landing gear. Nevertheless, the hazard associated with tire explosions would exist if such an airplane design were proposed. The rule is therefore adopted as proposed in that regard.

This commenter also notes that, while nitrogen is the most likely inert gas that would be used to inflate tires, it would be necessary to ensure that any other "gases shown to be inert" are approved by the manufacturer as not being detrimental to the tire. The commenter suggests changing the rule to refer to other *suitable* gases shown to be inert, and approved by the tire manufacturer. The FAA shares the concern expressed by the commenter; however the wording in the rule as proposed in Notice 90–7 contains the phrase "nitrogen or other gases shown to be inert." This requires that the applicant manufacturer demonstrate to the FAA that any "other gas" is suitable for use. The term "approved by the manufacturer" is inappropriate since only the FAA or persons authorized to act on behalf of the FAA have the authority to approve the use of another gas. The rule is therefore issued as proposed in this regard.

This commenter also expresses concern regarding servicing of tires at remote locations where dry nitrogen is not currently available, and expresses the assumption that there is an operational counterpart to the proposed change in part 25 of the FAR. The commenter notes that some European countries have a maintenance practice allowing servicing of tires at remote sites where dry nitrogen is not available by either ascertaining that the oxygen content stays below 5 percent or requiring that the tire be purged and inflated with dry nitrogen within 15 flight hours after servicing with air. This practice is also allowable under airworthiness directives issued by the FAA addressing existing airplanes. The FAA infers that the commenter is suggesting a change to the final rule to allow servicing with air at remote sites under the above maintenance practice. The FAA does not concur with this suggestion. The cost of supplying dry nitrogen servicing equipment to airports that are not now equipped to service large transport category airplane tires in accordance with this rule was investigated, as were the benefits that would accrue from promulgation of the rule and, as was noted in the preamble to Notice 90–7, it was determined that the ratio of cost versus benefits was favorable. A tire explosion could occur with catastrophic consequences within the 15 allowed hours following servicing a tire with air. Further, this rule does not affect airplanes now flying and the FAA is confident that suitable service facilities can be supplied where needed prior to new airplanes certificated in accordance with this rule becoming operational.

One commenter recommends revising the new § 25.733(e) to state "For an airplane with a maximum certificated takeoff weight of more than 75,000 pounds, means shall be provided for tires mounted on braked wheels to

preclude tire explosions." The commenter states that "The proposed regulation is a design dictate which precludes alternate designs, more economical solutions, or any advancement in the state of the art beyond the 1980's," and notes that the new rule should "not preclude the search for tire inner liners which do not release explosive vapor. It should not preclude solutions which prevent tire temperatures from reaching the temperatures at which outgassing occurs since this would also preclude tire structural damage from overheat." The FAA concurs with the intent of the commenter's suggestion. There is currently no known means to protect transport category airplanes from the hazards associated with tire explosions except through mandatory use of an inert gas for tire inflation. Nevertheless, if a means is found in the future to preclude this hazard, either through the use of different tire materials or via design changes that can be shown to be effective in limiting tire temperatures to safe levels, that means would be acceptable. Section 25.733(e) is changed to reflect such alternative methods of compliance.

This same commenter goes on to state that the proposal "imposes a constraint on design which does not achieve the intended purpose—to ensure that tires are always filled with inert gases during their entire service life." The commenter states that the regulation should address the servicing and maintenance of the aircraft. The FAA infers from this comment that the commenter desires specific wording in the new rule to control maintenance procedures. The FAA does not concur with this comment. The operating rules require that all civil aircraft be operated in accordance with operating limitations specified in the approved Airplane Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry. Therefore, placing wording to control maintenance procedures in part 25 as suggested by the commenter would be duplicative.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full Regulatory Impact Analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the Regulatory Flexibility Determination required by the Regulatory Flexibility Act and an International Trade Impact Analysis. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

None of the comments on the NPRM for this amendment addressed the evaluation of costs and benefits, and, accordingly, no resulting changes have been made to the evaluation.

Economic Evaluation

It is likely, for reasons of efficiency and practicality, that since air carriers are currently using inert gas, and inert gas tire inflation equipment and procedures on their existing fleets, they will voluntarily employ the same equipment and procedures on airplanes with new type certificates. Since this rule mandates what is already an existing industry practice, as required by airworthiness directive, actual costs and benefits attributable to the rule are expected to be negligible.

Notwithstanding, the FAA has analyzed potential costs by assuming, as a worst-case scenario, that 5 percent of the affected, newly-certificated airplanes would use compressed air to service their tires in the absence of this rule. The evaluation further assumes that nitrogen inflation equipment could be required at as many as 20 destinations not previously served by U.S. operated, large transport category airplanes.

Technically, none of the four new airplane models that are currently scheduled for delivery between 1992 and 2001 will be subject to the rule since their certification bases were established at the time of application. Therefore, this evaluation considers the succeeding 10-year period, 2002 to 2011, and assumes that the same numbers of new-model airplanes will be delivered during that period as are currently forecast for the 1992 to 2001 period.

The following additional factors were used in determining the potential costs of this rule.

- Bottled nitrogen will cost an average of $0.98 per 100 cubic feet.
- Each tire will require approximately 155 cubic feet of nitrogen over its useful life.
- Nitrogen inflation equipment will cost $780 per unit for bottle carts, hoses and fittings.

Under these assumptions, the present-value equivalence of $1,300 in operating costs and $5,468 in equipment costs could be expended over the period from 2002 to 2011 as a result of this rule.

The primary benefit of the rule is the elimination of any remaining possibility of tire explosions caused by tire inflation with compressed air. The FAA is unable to predict the probability that a tire autoignition accident would occur in the absence of this rule. However, the discounted present value of averting an accident similar to the 1973 crash at Dulles would equal $190,000. If the probability of averting a single noncatastrophic accident is only 3.6 percent ($6,768/$190,000), this rule will prove to be cost beneficial. Accordingly, the FAA believes that the potential benefits of this rule will exceed the potential costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. Based on these factors, the FAA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The provisions of this rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers will have to meet the U.S. requirements, and thus would gain no competitive advantage. In foreign countries, U.S. manufacturers are not bound by Part 25 requirements and could, therefore, implement the provisions of this rule solely on the basis of competitive considerations.

Federalism Implication

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because the requirement to use inert gas in lieu of air for tire inflation is not expected to result in a substantial cost, the FAA has determined that final rule is not major as defined in Executive Order 12291. Because this is an issue which has not prompted a great deal of public concern, this final rule is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, since there are no small entities affected by this rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this final rule, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft Aviation safety, Safety.

The Amendment

Accordingly, Part 25 of the Federal Aviation Regulations (FAR) (14 CFR Part 25) is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. By amending § 25.733 by adding a new paragraph (e) to read as follows:

§ 25.733 Tires.

* * * * *

(e) For an airplane with a maximum certificated takeoff weight of more than 75,000 pounds, tires mounted on braked wheels must be inflated with dry nitrogen or other gases shown to be inert so that the gas mixture in the tire does not contain oxygen in excess of 5 percent by volume, unless it can be shown that the tire liner material will not produce a volatile gas when heated or that means are provided to prevent tire temperatures from reaching unsafe levels.

Issued in Washington, DC, on February 22, 1993.

Joseph Del Balzo,

Acting Administrator.

[FR Doc. 93–4506 Filed 2–25–93; 8:45 am]

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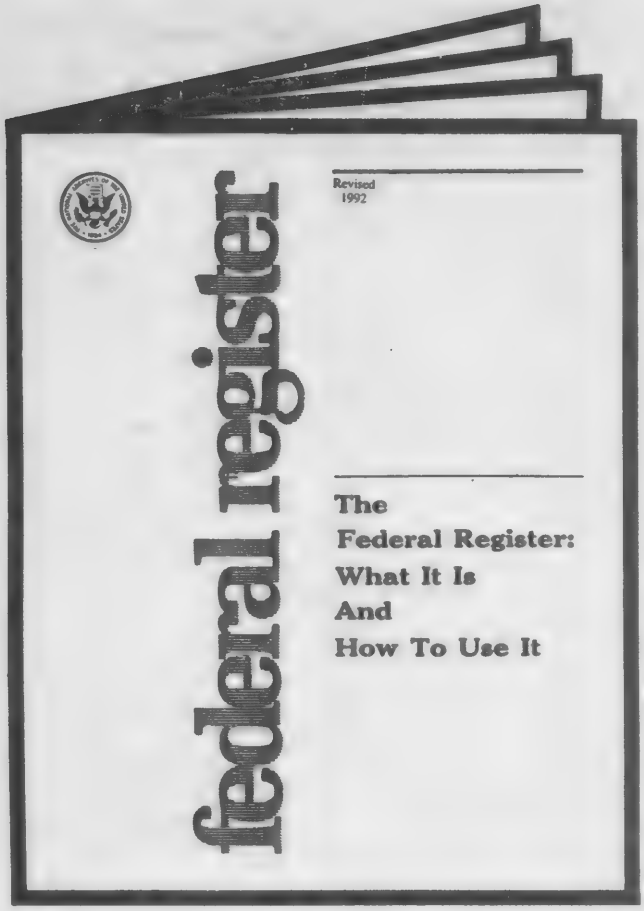

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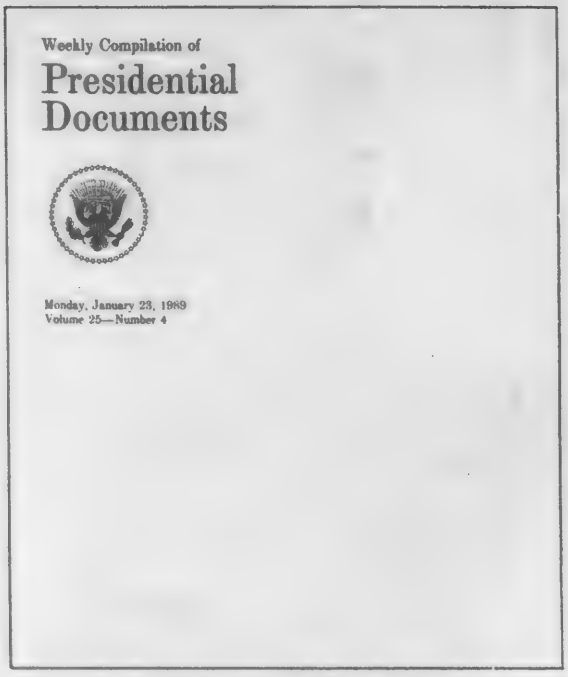

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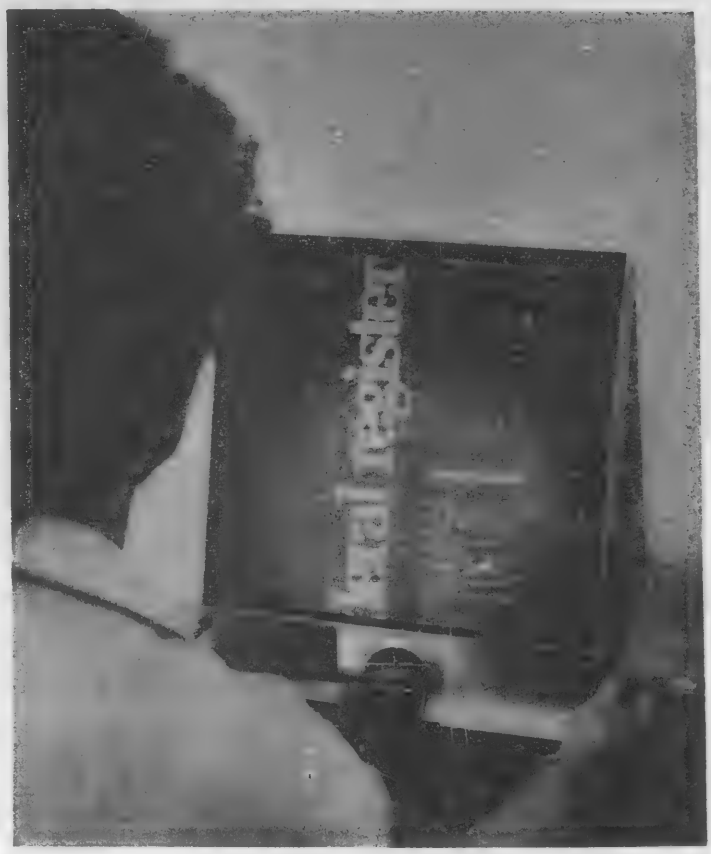

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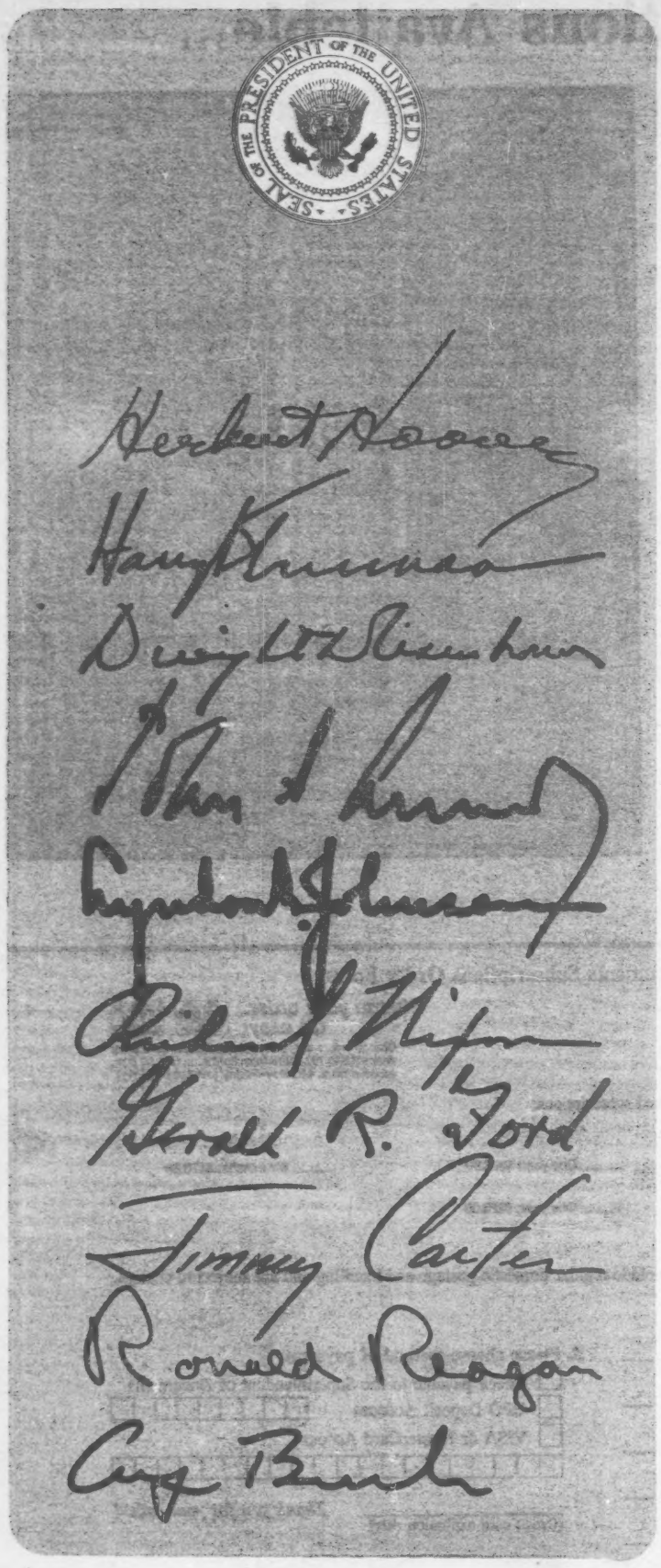

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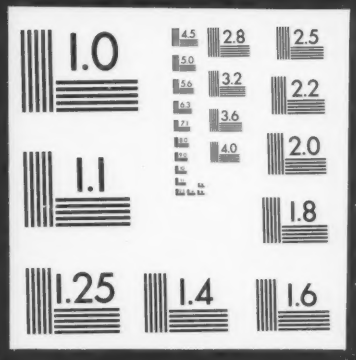
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